AN

Historical Vindication

OF THE

DIVINE RIGHT

OF

TITHES,

FROM

Scripture, Reason, and the Opinion and Practice of *Jews*, *Gentiles*, and *Christians* in all Ages.

DESIGNED

To Supply the Omissions, Answer the Objections, and Rectifie the Mistakes of Mr. *Selden's* History of Tithes.

By THO. COMBER, *D.D.*

LONDON,

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MVSEVM
BRITAN
NICVM

TO THE

Right Reverend Father in God,

HENRY,

Lord Biſhop of *LONDON*,

ONE OF THE

Lords of His MAJESTIES

Moſt Honourable Privy Council.

My Lord,

THough the Sacred Maintenance of Tithes be not ſo neceſſary to the Being of a Church, as a true Faith and a right Way of Worſhip, yet it is ſo requiſite to the Well-being thereof, that after my endea-

vours to vindicate our excellent Forms of Worſhip, I hope it is not improper for me to undertake the defence of that Holy Revenue which ſupports them. For ſince our Lord chooſes Men for his Ambaſſadors, and doth not feed, cloath, or teach them by Miracle now, theſe Divine Offices will be but meanly performed, unleſs ſuch Proviſions be made for thoſe that do Adminiſter them, as may keep them from neceſſity, ignorance, and contempt. And the miſerable condition of thoſe Churches which have been unhappily or wickedly ſtript of that Inheritance, which God appointed for the honour and defence of Chriſtianity, may teach us both to be thankful for the Prudence and Piety of former Ages in endowing this Church, and to beware of there deſigns in this Age, who out of Envy or Covetouſneſs would diminiſh or deſtroy theſe juſt and uſeful Endowments. It is very ſad to conſider, that even of Gods ancient Patrimony, *Tithes*, ſo much was firſt alienated by the Pope, and is ſtill detained by ſuch as pretend to hate all Popiſh Practices and Opi-

nions

nions (but what tends to their profit) that many Churches cannot afford their poor Incumbents food and rayment; yet inſtead of reſtoring, at leaſt a Competency, which the very Law of Nature requires, too many do endeavour by all kind of Artifices to leſſen thoſe Dues that are remaining, and are ſo far from imitating the Charity of former Times in giving any thing to God out of their own, that they will not be ſo juſt as to let us quietly enjoy what others have freely given us. Which bold and manifeſt Sacriledge (*a*), I have reaſon to believe many have been encouraged to commit by that currant and commonly received Error, *That Tithes are not due by Divine right, but only by humane poſitive Conſtitutions.* For in the days of our Fathers, while the Divine right was generally maintained and believed, it was thought a matter of Conſcience to pay Tithes juſtly. But now they that are either ſo cunning to avoid diſcovery, or ſo great to deſpiſe the puniſhments of the Law, do without ſcruple in part, or in whole, ſubſtract or detain their Tithes, and

(a) *Si verò is qui propria vota non reddit infidelis eſſe convincitur, quanto majoris impietatis reus eſt, qui ea quæ alii voverunt & reddiderunt uſurpat.* Agobard. de diſp. rei Eccleſ. cap. 11.

and by this falſe Principle are perſwaded it is no Sin that they need to repent of, ſo that the ſame Error that encourages them to do this great injury to the Church, cauſeth them to do a greater to their own Souls. And ſince this Opinion is as falſe as it is miſcheivous, being a Modern invention, which contradicts Scripture and Reaſon, and the Judgment and Practice of the beſt Men in all times and places (all which declare for the Divine right of Tithes) I eſteemed my ſelf obliged, as well in duty to the Church as in Charity to the Souls of ſuch as are deceived, to confute that pernicious Error, that *Tithes are only due by Humane right*; a Principle too unwarily received by ſome that are no Enemies to the Church, who do not conſider that this was the foundation of all thoſe Petitions made to the late uſurping Power for taking away Tithes, *viz.* That the ſame Authority which gave them beginning might alter or aboliſh them when they pleaſed; which Petitions, if Providence had not prevented their ſucceſs, had ended in the utter ruine of Religion

gion it ſelf. I am ſure the Divine Right of Tithes hath been the Opinion of the beſt and moſt learned Men in all Ages, and I ſee no reaſon why we ſhould deſert ſo ancient, ſo univerſal, ſo uſeful, and ſo well atteſted a Truth in this Age, when ſo many are rather deſirous than able to diſprove it. As for the Libels of the wilder Sects, there is ſo much noiſe and ſo little ſenſe in their railing rather than reaſoning againſt Tithes, that they are not worth confuting: For all that they or any others ſay againſt the Divine Right, which looks like Argument, is borrowed from the Learned Mr. *Selden* (whoſe induſtry and parts I muſt own with reſpect, while I cenſure his partiality, and diſcover his miſtakes) His more learned than faithful Hiſtory of Tithes, hath been, if not the Parent, yet the Nurſe of this common and miſchievous Error: wherefore I have very ſtrictly examined it, and by filling up the Omiſſions, removing the Objections, and modeſtly obſerving the Miſtakes thereof, I have not only vindicated the Opinion of the Divine right of Tithes, but ſhewed the

Practice

Practice of all Ages and Nations hath been agreeable thereunto, and this with ſo much brevity, that if my Reader do not compare Mr. *Seldens* Hiſtory with this Diſcourſe, he may ſometimes complain of ſome obſcurity in the ſtyle; but I hope he will find no deſigned faults in the Matter, which affords a methodical and compleat Hiſtory of Opinion and Fact in the Caſe of Tithes, from the beginning of the World unto the Times of the Reformation, with many uſeful accounts of the Original of Pariſhes, Patronages, Inſtitutions, Exemptions, Appropriations, and Infeodations, all which rightly explained ſerve to clear our Opinion concerning the conſtant belief of the Divine Original of Tithes.

I know in ſuch an Age as this, I muſt expect the cenſures and diſpleaſure of all ſuch who have upon truſt admired my great and eminent Adverſary, and alſo of all whoſe ſecular intereſt engages them to diſguſt this undoubted Truth: And therefore I have preſumed to flie to Your Lordſhips Patronage and Protection, with great

aſſurance

aſſurance of Your exemplary Zeal in promoting, and Your generous Courage in defending all Pious deſigns that tend to the honour of Religion, and to the ſafety of the Church; and if your Lordſhip will pleaſe to accept, and own all that is juſtifiable in theſe Pages, I ſhall eſteem my ſelf ſufficiently armed againſt all aſſaults, by the honeſty of my Intentions, the equity of my Cauſe, and by the Honour of being accounted,

My Lord,

East-Newton,
Octob. 3. 1681.

Your Lordſhips

Moſt faithful Servant,

THO. COMBER.

THE
PREFACE.

THE great Fame of Mr. Selden's *Learning hath given ſuch reputation to all his Works, and among the reſt to this* Hiſtory of Tithes, *that many who never examined the particulars receive it all for infallible Truth: but* Socrates *hath taught me to prefer no Man before the Truth* (a); *and Mr.* Selden *himſelf ſaith,* He doth not wiſh his Book ſhould gain any ſtrength of Truth from his Name alone (b), *yea he bids every one* try it with the moſt cenſorious Examination (c), *adding* ——& ſi tibi vera videtur, Dede manus, aut ſi falſa eſt accingere contra. *Invited by which Admonition, I have diligently examined this Hiſtory, yet without any cenſoriouſneſs, and with all due reſpect to the Authors Learning: and (notwithſtanding all his Proteſtations in the entrance of his Preface) I find very many miſtaken and falſe Quotations, with divers forced and fallacious Interpretations of ſuch places as are truly cited, as alſo innumerable Omiſſions of things very material, which ſeem to be left out by deſign, becauſe Mr. S. his vaſt reading, makes it very unlikely he ſhould not meet with obvious things in*

(a) Juſtin. *Martyr. Apol.* 1. *p.* 47.
(b) *Preface, pag.* 11.
(c) *Ib. p.* 22.

common Authors. And since my only aim is, to rectifie the Errors and supply the defects of this History, I hope this Great mans Friends will not be offended, while he himself saith, If I through ignorance have omitted any thing in the History or Review, which deserved place in either of them, whoever shall admonish me of it, shall have a most willing acknowledgment of his Learning and Courtesie (d). *I know it is commonly thought the Clergy are no Friends to this* History of Tithes; *but there is no reason they should dislike it, if his performances had suited that protestation which he makes here,* That it was not written to prove, Tithes are not due by the Law of God, or that the Laity may detain them, or still enjoy Appropriations——nor was it written at all against the Maintenance of the Clergy——nor is any end in it to teach any Innovation, by an imperfect pattern had from the musty Relicks of former times (e). *But he that reads the Book it self will find, that (forgetting these fair professions) he conceals some of the best Proofs for Tithes, rejects others, and questions all that seem to establish the Divine right or Universal practice of Tithes, greedily searching after, and plausibly setting off all that appears to make against it. Yet I am confident, divers have stretched some passages of this Book further than ever Mr. S. intended, and have drawn Conclusions from it, which he (if yet alive) would blush to see; for since the beginning of our late Sacrilegious Civil War this History hath been the Armory, to which all Sectaries and Covetors of the Church Revenues have resorted, for Instances*

(d) *Ib. p.* 12.

(e) *Ib. p.* 1, & 2.

ſtances and Arguments againſt this Sacred Maintenance of the Clergy: ſo that it is not only for the good of the Church, but for the vindication of Mr. S. his Memory, to prevent thoſe who would make an evil uſe of this Book, the ill conſequence whereof, when Mr. S. himſelf foreſaw (almoſt as ſoon as it was printed) He did repent of writing it; and Jan. 28, 1618, *appearing at* Lambeth *before* George *Biſhop of* Canterbury, Lancelot *Biſhop of* Wincheſter, *the Biſhops of* London *and* Rocheſter, *and three Knights, Doctors of Civil Law, ſitting judicially, He made this ſubmiſſion under his own Hand:* My good Lords, I moſt humbly acknowledge my Error which I have committed in publiſhing the *Hiſtory of Tithes*, and eſpecially in that I have at all by ſhewing any interpretation of Holy Scripture, by medling with Councils, Fathers, or Canons, or by what elſe ſoever occurs in it, offered any occaſion of Argument againſt any right of maintenance *Jure Divino*, of the Miniſters of the Goſpel; beſeeching Your Lordſhips to receive this humble and ingenuous Acknowledgment, together with the unfeigned Proteſtation of my Grief, for that through it I have ſo incurred both His Majeſties and Your Lordſhips diſpleaſure, conceived againſt me in behalf of the Church of *England*. *This was then taken for a Retractation, and though the licentiouſneſs of the late Times emboldned Men of leſs knowledge to urge this Book as Authentic in all its concluſions; yet the Learned Author himſelf did not (that I know of) print any Vindication of it, though it was writ againſt by divers conſiderable*

Men

Men in his own life time, which is (to me) a convincing proof, That he was conscious of many great Mistakes in it. And if any can hardly believe so Learned a Man should commit so many Errors, they do not consider that he was not much above Thirty years of Age when he writ this, and being a Man of business was forced to take many of his numberless Quotations upon trust from others, and particularly from Sir Rob. Cotton, *as he partly confesses in the Epistle. Yet after all this it must be granted, there are many ingenious, useful, and choice Observations in this History, by which he hath obliged the World: And if his own Pen did not too often magnifie his own performances, as being far beyond all that was done before* (f), *and at the same time depress and vilifie all that had then writ on this Subject* (g), *he would have deserved, and should have received more Thanks for his pains herein; but I shall not imitate, that which I censure in this, otherwise, great Man, nor will I opprobriously insult over any of his Mistakes, but impartially trying all, I will endeavour to confirm what is true, commend what is praise-worthy, and content my self barely to intimate what is false, and fill up whatever is yet wanting to make the* History of Tithes *compleat: A Subject of that great importance, large extent, and grateful variety, that it will deserve and invite the strictest observation, because it leads us into the* Laws, Rites, *and* Customs *of all Countries and all Ages; and yet it is a Question of so much difficulty as might have discouraged me from attempting it, but that I am greatly assisted, sometimes*

(f) *Preface, pag.* 13. *& Review, Ch.* 3. *pag.* 457. & alibi passim.

(g) *Preface, pag.* 4. *&c.*

*times by Mr.*Selden *himſelf, and very often by the Famous Dr.*Mountague, *Dr.*Teldeſly, *Mr.*Nettle, *and ſome others who formerly anſwered this* Hiſtory of Tithes, *but their Books are now ſo very ſcarce, and all of them ſo large, that few have opportunity to get them, or leiſure to read them: wherefore I judge it will be a very uſeful undertaking to examine and collect all their Remarks upon this Hiſtory, and (omitting whatever was leſs weighty or petinent) to put into a clear method their cloſeſt Inſtances and Arguments, adding all along variety of my own Obſervations for a full diſcovery of the Truth in this point of* Tithes, *ſo that whatever is material either for it or againſt it, may be ſeen at one view: and if it may ſeem to any to be too large, they will eaſily diſcern it is not my fault (who have ſtudied all poſſible brevity) but the copiouſneſs of the Argument that occaſioned it; but I muſt not make it longer by Apologies, and therefore having given this account of my own deſign, I will only make ſome few Remarks on Mr.*S. *his Preface, and ſo paſs to the Queſtion it ſelf.*

Pag. 1. *He tells us, his Book* is but a meer Narration and the Hiſtory of Tithes, *yet* p. 2. *he ſaith,* Antiquity is not related in it barely to ſhew what hath been, but to give light to the practice and doubts of the preſent Age; *and* p. 11. *he confeſſes he hath drawn* both Concluſions and Conjectures from his Premiſſes, *which is ſomewhat more than a meer Narration; and indeed his partial arguing all along for his private Opinion, ſhews him rather a Diſputant for one ſide, than a Relator of Matter of Fact.*

Pag. 2. *Where he is commending his own accurateneſs, and deſpiſing others, he cites* Iſidore Peleuſiota *wrong, both as to the place and the ſenſe too, for* Iſidore *makes not* Habit *and* Beard *the enſigns of diſſembled Ignorance* (*as Mr.S. miſtakes*) *but of diſſembled Piety: and the place is* (*not* lib. 1. Ep. 92. *as in his firſt Edition, nor* Ep. 29. *as in his ſecond; but*) lib. 1. Ep. 220. p. 64.

Pag. 4. *Thoſe ſcoffing Cenſures of all that had writ about Tithes before Mr.S. look very odly from a young Man of* 33 *years of Age, when we conſider that the Reverend Biſhop* Andrews, *the Learned Biſhop* Carleton, *Dr.* Sclater, *Sir* James Sempil, *and divers others had not long before writ on that Subject. And the Sectaries and Sacrilegious Arguers againſt Tithes, who cites all that Mr.S. ſays on Truſt, and having little in them, but what they ſteal from him and from one another, do much more deſerve, to be compared to the later Poets licking up* Homers *vomit, and to be reflected on by that Proverb of* Sardi venales, *which ſignifies* (*not, worſe and worſe, as Mr.S. ſaith, but*) *a tedious row of the ſame thing over and over again, than thoſe Great and Eminent defenders of the Divine right of Tithes before named.*

Pag. 5. *But the main thing obſervable in this Preface is, that he ſaith,* It is a common, but moſt deceiving Argument among them (*who writ of Tithes before Mr.S.*) affirmatively to conclude fact or practice of Tithing, from what they ſee ordained for Tithes in any old Canon of the Church. *Now if this be ſo deceiving an Argument, why doth Mr.S. himſelf uſe it* (h), *when he concludes, faſting*

(h) *Review of 4. Chap. p. 463.*

faſting the laſt day of Lent *till Cocks crow, muſt needs have followed, if the Conſtitution appointing it had been extant; which is the ſame kind of arguing that he here condemns. But for my own part, I doubt not but this way of Arguing is fair and good; for when we enquire of Fact or Practice, we do not examine what are the Acts of the Impious and Profane, who deſpiſe the Laws of God and Man; but we enquire what is done by orderly and good Men, and ſurely their Practice may be concluded in point of Tithes, from what the Fathers preached in their Sermons and decreed in their Synods: for how ſlightly ſoever theſe are now eſteemed by ſome, the Emperor* Juſtinian *ſaith,* They that keep the holy Canons, ſhall have the bleſſing of God; and thoſe who diſobey them, expoſe themſelves to damnation (i): *And,* All that is decreed in the holy Councils of Biſhops, ought to be aſcribed to the Divine Direction, *ſaith Conſtantine* (k), *and the practice of Good men was generally conformable to them. And ſince the makers of theſe Canons were the moſt Learned and eminent men in every Age, they ſhew at leaſt what was the Opinion of thoſe Times, what the beſt did, and what the wiſeſt Perſons thought all ought to do. Perhaps Mr.* S. *may find ſome Ill men in all Times who did not obey either the Laws of God or Man; but doth it therefore follow we muſt not cite the Canons, which were rules to good Men, and ought to have been ſo to all? We can bring Examples in every Age, of Facts contrary to the Decalogue, and to the juſteſt Laws of the beſt Princes, yet ſtill we cite theſe Laws, to ſhew*

(i) Juſtin. *Novel.* 123.

(k) *Epiſt. ad abſent. Epiſc. in Actis Concil.* Nicæn.

what was the rule and the practice of the better sort. But while Mr. S. condemns this sort of Arguing, he frequently falls into one far worse and more deceiving, for he argues from a few Examples of some mens practice, that such Acts were right, and that all the Laws made against such practices were little observed; yea, if he can but find a Canon or a Decretal Epistle blaming any Fact as wicked, and forbidding it, presently he concludes the Laity had a challenged right to do those Acts, and upon this foundation are very many of his Notions built: but we can much easier prove Facts rightly done followed upon Canons duly made, than he can prove that the prohibition of any Fact shews the party prohibited had right to do the thing forbidden; for we have History and Examples to back all our old Canons with, which undeniably shews they were observed. 'Tis true, some of the later encroaching Popes Decretals were sometimes not allowed to be obeyed by wary Princes; but these Decretals are seldom cited by the Writers of Tithes before Mr. S. who hath more of these Quotations in one Chapter, than all the English *Writers before him had in all their Books. And when he tells us, he will give Instances of Canons upon which no Fact followed, he instances chiefly in some Decretals: As that of* Alexander *the Third to the Bishop of* Lisieux, *An.* 1160. *about repairing Churches, which being to a private foreign Bishop, no wonder if it was not obeyed here* (l). *His next instance is false cited; but in another place there is such a Decretal, forbidding Clergy-men to bequeath their Chattels* (m); *but*

(l) *Decret. l.3.Tit.48. cap.4.*

(m) *Ibid. Tit.26.c.7.*

but this unjuſt Decree was contrary to the old Canons (n), *as well as to reaſon, and therefore no wonder if it were not obeyed here. And yet we might bring as many Civil Laws of our own Country, which in that Age were over-ruled by the Canons of the Church, as he can produce Canons over-ruled by Civil Laws and Cuſtoms, of which exorbitant power of the Canons our own Hiſtorians often complain; but this is not to our purpoſe, for we lay moſt weight upon the Ancient and Primitive Canons in the devouter Ages, and I hope we may conclude that practice followed them, whatever become of theſe Decretals. But he urges the* 12th *Canon of* Chalcedon, *which only forbids private Biſhops to ſeek the ſetting up of New Metropolitans, but doth not prohibit the Emperor from making ſuch; and the like is to be ſaid of the* 38th *Canon in* Trullo; *and the* 55th *Canon there was deſigned to impoſe an Eaſtern Cuſtom on the Weſtern Church, and ſo was not like to be obſerved. As for the* 15th *Canon of* Chalcedon, Balſamon *ſaith not, it was never practiced, but that it was grown out of uſe in his time, nigh* 800 *years after. And the* 28th *Canon of that Council did hold in the Eaſt* (*where it was made*) *for a long time, and was at laſt run down by the Popes power, not the Secular Law: and that of* Bagadius (*not* Gabadius) *in the Council of* Carthage, *is only a Canon of one Council diſpenſed with by another, not repealed by Secular Law. So that in this heap of Marginal Quotations there is not one pertinent Inſtance, and after all we may well conclude from Ancient Canons never repealed in*

(n) *Apoſtol. Can.* 40. *Concil.* Antiochen. *can.* 34.

any other Synod, and confirmed by many Secular Laws that Practice followed, and this is all we ſhall deſire in the caſe of Tithes. The reſt of his Preface being anſwered in the Book, or nothing to the Queſtion, I ſhall wave when I have noted, that pag. 21. *he brings in an unjuſt Complaint in the Diet at* Norimberg, *An.* 1522, *which had no effect, as if it were a Law that prevailed againſt the Canons of the Church, but the contrary may be ſeen in* Wolfius (o); *this will give the Reader a Taſte of Mr. S. his way of citing Authors, of which there are innumerable Inſtances in the following Diſcourſe.*

(o) Gravam. (*not* 45, *but*) 61. *ap.* Wolf. *Memor. lect.* T. 2. p. 220.

To which we had immediately proceeded, but only that there is lately Printed a New piece of Beneficiary Matters, *tranſlated (as is ſaid) out of* Italian, *and pretended to be writ by Father* Paul; *but the Tranſlator brings no proof it is his Work, and the Author of* F. Paul's *Life, reciting all his Works ſaith,* Theſe are the Works of F. *Paul,* that are ſeen abroad in Manuſcript or Print, under his only Name, or that are certainly reputed his (*p*); *but this Piece is not once named there, and ſo perhaps may be none of his: yet if it be, the* Venetians *Quarrel with the Pope about the Priviledges and Revenues of Eccleſiaſtics, might oblige that Great man to put ſome Notes haſtily together in favour of the States pretences, and being a Fryer, he may well be ſuppoſed no Friend to the Divine Right of Tithes; but whoever was the Author, he was no doubt provoked by the notorious Abuſe of the Eccleſiaſtical Revenues in the Church of* Rome, *againſt which moſt of this diſcourſe is levelled: but whoever*

(p) *Life of* F. Paul, *at the end of Council of* Trent, *pag.* 48.

whoever be the Writer, there are many miſtakes and groſs Errors in it, which, becauſe they are fully confuted in the following Diſcourſe, I will only name here, and doubt not but the Reader will be ſatisfied by the following Pages, that this Charge is very juſt.

Pag. 3. *He affirms untruly,* That the cuſtom of Chriſtians having all things common, went no further than *Jeruſalem,* and laſted not long there.

P. 4. *His Arguments about popular electing of* Biſhops, *are anſwered and diſproved in Dr.* Stillingfleet's *laſt Vindication, and* Beveridge's *Councils,* Tom. II. (q).

P. 5. *That Chriſtians had Houſes and Lands belonging to the Church in times of Perſecution, may be ſeen in* Euſebius (r).

P. 7. *That S.* Auguſtine *did receive Inheritances given to the Church when no kindred were wronged, and counted it a ſin to revoke ſuch Donations, appears by his Life* (s).

P. 13, *and* 14. *That the Opinion of Tithes being due to the Church, began in* France *about the year* 800, *is notoriouſly untrue; as alſo*

P. 15. *That S.* Auguſtines *Sermons treating of* Tithes *were forged in after Times, and that Tithes were never paid in* Africa.

P. 17. *It is falſe alſo, That the Cuſtom of paying Tithes in* Italy, *began after the year* 800.

P. 23. *That there is no proof in the New Teſtament for eſtabliſhing* Tithes, *and that they are only due by the Ceremonial or Judicial Law, are great miſtakes.*

(q) *Not. in Can.* 4. *Concil.* Nicæn. p. 47, & 48.

(r) *Vit.* Conſtant. *l.* 2. *cap.* 39.

(s) Poſſidon. *vit.* Auguſtin. *cap.* 23, 24.

P. 24.

P.24. *As alſo that the* Levites *had no Land at all; and that the* Jews *paid no other but Predial Tithes.*

P.25. *That Tithes are due to the Clergy only* Jure humano, *becauſe the diſtribution of portions of them into diſtinct Benefices was inſtituted* Jure humano. *And that Lay Patrons have direct Dominion over the Churches Goods, are groſs Errors: with very many more, too tedious to be recited, yet all of them fully confuted in the following Diſcourſes, whereby I hope it will be evident to all ſober and impartial Men, how weak the Arguments, and how baſe the Deſigns of thoſe are, who go about to deſtroy that proviſion which God hath made for the ſupport of thoſe that attend his Service. For we have here ſhewed, that the competent Maintenance due to the Clergy by the Law of Nature, ought to be fixed in the Proportion of a Tenth part, becauſe* The Tenth *was choſen by God himſelf at firſt, revealed to the* Patriarchs, *and commanded to the* Jews *in the Old Teſtament; the* Tenth *is not repealed, but eſtabliſhed in the New. This Part was generally paid by* Patriarchs, Gentiles, Jews, *and* Chriſtians, *in all Ages and places. This Part is believed by the Fathers and beſt Authors to be due to the Goſpel Miniſters by the Law of God, and to them it hath been paid in obedience, as well to Divine as Humane Laws in moſt Chriſtian Countries, from their firſt Converſion. And here in* England *Tithes were freely paid from the beginning of Chriſtianity, and above* 800 *years ago ſolemnly given by the whole Nation to God and the Church, by an irrevocable Vow recorded in a Public*

Public Law, and confirmed ſince by innumerable Civil and Eccleſiaſtical Conſtitutions; they have been all along enjoyed by the Clergy, and diſpoſed of by their conſent, and are now ſetled on them by firm Laws, by long Preſcription, ancient Cuſtom, and general Practice: ſo that they cannot be taken from them without the higheſt Injuſtice and Sacriledge (t). *All this I hope is clearly made out, and if Secular Intereſt did not blind mens Judgments, and the commonneſs and frequency of doing evil make them leſs ſenſible, I ſhould not doubt but all would readily confeſs* Tithes *are due to the Clergy both by Divine and Humane right, and that their Practice would be agreeable thereunto.*

(t) Si vero is qui propria vota non reddit, infidelis eſſe convincitur — quanto majoris impietatis reus eſt, qui ea quæ alii voverunt & reddiderunt uſurpat. *Agobardus de diſp. cap.* 12. *pag.* 279.

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CHAP. I.

Of Tithes before the Law.

§.I. ALmighty God, the Creator and the giver of all good things we enjoy, doth ſo communicate his Bleſſings to us, that though we have the uſe, he ſtill retains his right to them all (*a*), for *the Earth is the Lords and the fulneſs thereof* (*b*). And in this ſenſe when we dedicate any thing to him, we do but give him his own (*c*). But though all that we have be his with reſpect to this general right, yet he doth not require we ſhould actually give him all, provided we own his bounty and acknowledge his right by offering ſome part to his honour, which being as a Quit-rent tendered to the Supreme Lord of the World, gives us right to enjoy the reſt: A duty ſo evident in it ſelf, that all Nations have learned from the Light of Nature to make ſome ſuch real oblation to their Gods, and ſome have thought *Cain* and *Abel* had no other guide to direct them in that firſt Offering we read of *Gen.*iv.3.(*d*) Though becauſe there ſeems to have been a ſacrifice of Beaſts (which natural reaſon alone could not teach men to offer to God) and becauſe *Abel* is ſaid to offer by Faith (*e*) (which muſt be grounded upon ſome declaration of Gods Will) therefore moſt Authors conclude that God himſelf firſt taught *Adam* this way of acknowledging him, and he from that Revelation taught it unto his Sons, who did annually at a certain and ſolemn time make this oblation, as *Aben Ezra* gathers from that phraſe *In proceſs of time*, ver.3. (*f*) As for the Offering it ſelf, the Ancients frequently call it *Firſt-Fruits* (*g*), and though the proportion is not recorded in Scripture, yet that dividing or ſeparating Gods part from the reſt of their Poſſeſſions (mentioned in the

(*a*) Κ]ήσει μὲν τὰ πάντα Θεῷ, χρήσει δὲ μόνον γενήσεως ἔξι. *Philo* lib. de *Cherub.*

(*b*) Pſal.xxiv.1.

(*c*) 1 Chron. xxix.14.

(*d*) Rab. Levi. *Chryſoſt.* & *Grot.* in loc.

(*e*) Hebr.xi.4.

(*f*) Hebr. *in fine dierum*: hoc eſt, *revoluto anno*. Ab. Ezra & Fagius in loc.

(*g*) Ἀπαρχὴν. *Philo* de Sacrif. *Cain* & *Abel*. *Chryſoſt.* hom. in loc. & *D. Ambroſ.*

LXX. Tranſlation, where *Cain* is blamed for not *rightly dividing* (*h*)) ſeems to imply, there was ſome certain proportion to be offered; and though Mr. *Selden*, pag. 7. calls this a *miſ-tranſlation*, and out of thoſe Ancients that uſed it, would prove there is no quantity noted here. Yet the Tranſlation was uſed generally by the Apoſtles and primitive Chriſtians for nigh 400 years; and St. *Paul* plainly ſaith, *Abel* offered (πλείονα θυσίαν) a larger quantity in ſacrifice than *Cain*, and ſome have expreſly ſaid the proportion was a *Tenth* (*i*), and the general obtaining of that part afterwards makes it probable enough: However at preſent we ſhall only take this for an inſtance of giving God ſome part of his Gifts back again as an acknowledgment that all comes from him, which is not only a principle of the Law of Nature, but a poſitive Command of Scripture alſo where we are enjoyned *to honour the Lord with our ſubſtance*, Prov. iii. 9. for, *to Honour*, ſignifies to give ſome gift, eſpecially to our Superiours, or to thoſe we would ſhew reſpect (*k*); and though the proportion of this honorary gift be not named here, yet the next words —*and with the Firſt-fruits of all thy increaſe*, as alſo the promiſe *of filling our barns with plenty*, ver. 10. ſo uſually made to paying of Tithes, *Malach.* iii. 10, *&c.* hath perſwaded many, both *Jewiſh* and *Chriſtian* Interpreters, to expound this place of *Tithes* (*l*). Though we are content alſo to take this for a general precept of giving ſome part to God, and how Mankind came to fix upon the *Tenth* for that part, we ſhall proceed to enquire.

(*h*) Ἐκ ἐὰν ὀρθῶς προσενέγκῃς ὀρθῶς δὲ μὴ διέλῃς, ἥμαρτες. LXX. Gen. iv. 7.

(*i*) *Hugo de S. Victor.* annot. elucid. in loc. *Peter. Comeſtor* hiſtor. Schol. Gen. 26.

(*k*) *Honor donum intelligitur*, Hieron. in Math. xv. *& ita ipſe Chriſtus explicat Honora patrem, &c.* Math. xv. 4, 5, 6. Vide Numb. xxii. 17, 18. Acts xxviii. 10, &c.

(*l*) Rab. *Salom.* Rab. *Levi ben Gerſhom.* Antioch. homil. 120. *Cornel. à Lapide, Mercer, &c.*

§. II. Though there were no written Law for a *Tenth* before the *Levitical* Precepts, yet 'tis moſt certain the fixing of that proportion for Gods part, had not its original from thence, becauſe we have expreſs Teſtimony that Holy Men had uſed to dedicate that part before, and that God had approved of that proportion, the Scripture inſtances in *Abraham* and *Jacob*; and the *Jewiſh* Doctors out of their ancient Traditions affirm, that the reſt of the Patriarchs alſo gave Tithes: *Nachmunides* ſpeaks generally, *The Patriarchs liberally gave their Tithes to the Lords Prieſts*, viz. to *Shem* and

and *Heber* (*m*). R. *Bechai* ſaith, *Our Doctors affirm*, Iſaac *therefore meaſured the fruit of his Land that he might pay a juſt Tithe* (*n*). And that *Job*, (who lived before *Moſes* Law) paid *Tithes* alſo, is atteſted by Authors of greateſt credit among the *Jews* (*o*). So that ſince the firſt is ſo certain, and probably was ſo frequent, it may be very fit to enquire, whence theſe Patriarchs learned, that this and no other was the part properly belonging to God: it ſeems moſt likely to have proceeded from Divine Revelation at firſt, for *How could man know* (ſaith a Judicious Writer) *that he muſt give the Tenth, rather than the Ninth, the Eighth, or any other part of his goods, if he had not been taught it at firſt by God?* (*p*) If it be objected, That they pitched on this part by chance or fancy: I reply, Chance and fancy are uncertain and various, and rarely the original of any conſtant and regular practice. If *Abraham* had thus choſen this part, others would have liked ſome other proportion, and there would have been variety; but ſince this and no other part is recorded to have been given, no doubt it came from a ſteadier and higher principle; beſides it is certain, that God lid like and approve this Part, by his Care to record it for our imitation; by his not altering, but confirming this part in his written Law, and by his Bleſſing *Jacob* ſo liberally upon his vowing this part to him; all which may convince us, that he himſelf had directed the choice of this part at firſt, ſince he is not uſually pleaſed with humane inventions in matters ſo nearly relating to his Worſhip, nor is he wont to take mens fancies for his pattern in Eſtabliſhments of this kind, wherefore he approved the Tenth part afterward, becauſe he had directed it at firſt; which will be ſtill more probable when we conſider that theſe Patriarchs were very holy and religious Perſons, inſpired by the Spirit of God, and guided by the immediate direction thereof in all their ſolemn actions, and therefore 'tis likely in this alſo: they had then no written Law to walk by, and the Hiſtory of this period is ſo ſhort, that very few of thoſe immediate Commands which they received from God are left on record, or appear otherwiſe than that the actions grounded on ſuch commands are

(*m*) R. *Nachman* in Gen. xxvi. 5.
(*n*) R. *Bechai.* in Gen. xxvi. 12.
(*o*) R. *Salom.* in Job. xxxi. 8. *Chald.* par. in Job. xxiv. 19. *Talm.* tract. *Maſ. Shabad.* c. 2. fol. 32.
(*p*) *Hugo* de S. *Victor.* erud. Theol. de Sacram, l. 1. par. 11. c. 4.

ſet down as pleaſing to God: from hence we may conclude, theſe Patriarchs had a command from Gods Spirit to give this proportion, though it be not written in *Geneſis*. We read *that Abraham obeyed Gods voice, and kept his Charge, his Commandements, his Statutes, and his Laws* (*q*); but there are not ſo many recorded Orders of ſo different kinds from God to him as will anſwer to each of thoſe words; unleſs we grant there were many unwritten Revelations, among which might be this of *Tithes:* The Law of putting an *Adultereſs* to death, upon which *Judah* proceeded (*r*) is not on record before that practice, yet no doubt it was a Divine Revelation conveyed by Tradition ſince God confirmed it in the Law of *Moſes* (*s*): Yea, thoſe famous Seven Precepts of the Sons of *Noah* are generally believed to be ſuch unwritten Traditions derived from Revelation at firſt: Yea, the moſt remarkable rite of *Sacrificing* was practiced before there was a written command for it, and yet that is generally believed to have been eſtabliſhed by Divine Revelation; ſo that by parity of reaſon we may conclude, that God himſelf did chooſe this proportion of a Tenth, and teach it either to *Adam,* who conveyed it down by Tradition, or elſe to *Abraham,* who is the firſt that is expreſly recorded to have practiſed it; and this is ſufficient to deduce it from a Divine original, and to prove that it was derived from an unwritten Law of God at firſt, and that even in *Abrahams* time Tithes were due *Jure Divino.*

(*q*) Gen. 26. 25.

(*r*) Gen. 38. 24.

(*s*) Lev. 20. 10.

§. III. From the Inſtitution we paſs now to the Practice of Tithing, of which there are two famous inſtances in Scripture during this period: The firſt is *Geneſ.* xiv. where *Abraham* returning from his Victory over the four Kings, was met at *Shaveh*, or the *Kings Dale*, by *Melchiſedec* King of *Salem,* who *brought forth Bread and Wine, and he was the Prieſt of the moſt high God: And he bleſſed him and ſaid, Bleſſed be Abraham of the moſt High God, poſſeſſor of Heaven and Earth, and bleſſed be the moſt high God, which hath delivered thine Enemies into thine hand, And he gave him Tithes of all,* ver. 18, 19, 20. and to ſhew this related to Goſpel times, St. *Paul* largely Paraphraſes.

Paraphraſes this Hiſtory, and applies it to our Saviours Prieſthood, *Hebr.*vii. Here therefore we will firſt enquire who this *Melchiſedec* was, and ſecondly what theſe *Tithes* were which he received: *Firſt*, the Scripture ſaith, He was King of *Salem* (not that which was near *Scythopolis*, but) that which was after called *Jeruſalem*, very nigh unto which is that *Shaveh*, or the *Kings Dale*, where they are ſaid to meet (*t*), and indeed *Jeruſalem* was *Abrahams* direct way to *Hebron* in his return from *Hobah*, and the fitteſt place for him to meet the King of *Sodom*, and though S. *Hierom* was told by a *Jew*, that he was King of the other *Salem*, yet he there confeſſes all Chriſtians took it to be *Jeruſalem* (*u*), and ſo doth he himſelf elſewhere (*w*); of this opinion alſo are all the famous *Jewiſh* Writers (*x*), and Mr. *Selden* takes this to be the truer opinion (*y*). *Secondly*, the Holy Ghoſt ſaith *He was the Prieſt of the moſt High God: the great High Prieſt of the Greateſt God* (ſaith *Philo*:) we read alſo, that he did the office of a Prieſt in bleſſing *Abraham*, and bleſſing God for his Victory; and though this were an extraordinary occaſion, yet we may juſtly believe, that ſuch a Prieſt (the type of Chriſt and of the Goſpel Prieſthood) was not negligent at other times, but ordinarily and conſtantly did his office among thoſe *Canaanites* and *Phœnicians*, as a juſt reward whereof it is probable he did ordinarily receive Tithes from thoſe under his charge, as the early payment of Tithes among thoſe *Phœnicians* (of which more preſently) may perſwade us: And whereas we read not of any Ceremonial Worſhip that he performed, it is plain his Office conſiſted in thoſe Eternal and Evangelical duties of Praying for his People and Praiſing God, to which we may add his bringing out Bread and Wine, which the Fathers make the Type of the great Goſpel Sacrament (*z*), and therefore the Ancients doubted not to affirm, that the Goſpel Miniſters were of the ſame Order with *Melchiſedec* (*a*). They have the ſame work to do, and deſerve the ſame reward, *viz.*

(*t*) 2 Sam. xviii. 18. *Vallis regia duobus tantum ſtadiis diſtat à Jeruſalem.* Joſeph. Antiq. 17. c. 9. & Adricom. deſcrip. Terræ S. pag. 174.

(*u*) *Salem omnes noſtri Jeruſalem arbitrantur.* ad Evag. Tom. 3. pag. 62.

(*w*) Queſt. in *Geneſ.* Tom. 3. p. 328.

(*x*) *Joſeph.* Ant. lib. 1. cap. 11. *Targum* in Gen. xiv. *Midras Tehil.* Pſal. 6. 2 *Ab. Ezra* & *R. D. Kimki* in Gen. xiv. & *R. Levi Ben. Gerſh.* in Joſ. x. 1. conſer *Jeſai.* l. 21.

(*y*) *Selden* Review, p. 152.

(*z*) *Διὰ ὧν τὸν τῶν θείων Μυςηίων προσημαίνε τύπον* *Iſid. Peleuſ.* li. 1. Epiſt. 431. ita *Hieron.* qu. in Gen. Tom. 3. p. 328. & Chron. *Alexandrin. Tornacenſ.* Ep. 171. *Iſidor. Hiſpal.* Gloſ. in Geneſ.

(*a*) *Hieron.* ut ſupra *Epiphan.* contr. Hæreſ. 55. l. 2. Tom. 1. p. 209. *Steph.*

Tithes,

Tithes, which we ſee are not (as ſome ignorant perſons fancy) appropriate to a Ceremonial Prieſthood, but were paid to *Melchiſedec*, whom St. *Paul* makes to be of a quite different Order from that of the *Levitical* Prieſthood, whoſe Pedigree was to be proved and their deſcent to be on record; but *Melchiſedec*'s genealogy is not written (*b*), his Tribe is not recorded, nor his Family or Succeſſor mentioned, yet he had Tithes whoſe Prieſthood was no more tied to any one Tribe than ours is under the Goſpel; and as we derive our Prieſthood from this Order, ſo we may alſo prove our right to *Tithes* from the payment of them unto the firſt Prieſt of this Order: 'Tis true, he was alſo a type of Chriſt, and (though not Chriſt himſelf, as ſome fancy (*c*) yet) ſo like him, that the Fathers expound *Abraham*'s having ſeen *Chriſt*'s day, *John* viii. 56. of this his meeting with his type *Melchiſedec*: but his being a type of Chriſt's Prieſthood, (in all points but that of offering a bloody Sacrifice) doth not hinder him from being a type of the Evangelical Prieſthood alſo, which is in all things (except his offering himſelf on the Croſs) the ſame with Chriſt's Prieſthood, as he declares in his Commiſſion to thoſe Apoſtles (whoſe Succeſſors ordained us,) *As my Father ſent me, even ſo ſend I you* (*f*); wherefore we conclude, that the firſt receiver of *Tithes* upon record was a Prieſt, not of the ſame Order with *Levi*, but of the ſame Order with the Evangelical Prieſthood, and ſince they do the ſame Duties they have a good Title to the ſame Reward.

(*b*) Hebr vii. 3. Paraph. *Syriac.* *Cujus nec pater nec mater ſcripti ſunt in genealogiis.* ita *Epiphan.* contr. hær. 55. lib. 1. Tom. 2.

(*c*) *Pet. Cunæus* de Repub. Heb. l. 3. c. 3.

(*f*) Joh. xx. 21.

§. IV. The next enquiry is, what *Melchiſedec* did receive: The Scripture ſaith it was *Tithes of all* (*g*), and *a Tenth part of all* (*h*) But Mr. *S.* cannot conceive it is meant of any thing but Spoils (*i*), though he tell us, that Rab. *Salomon* and both the *Syriac* and *Arabic* Paraphraſe (on *Hebr.* vii.) explain it by *Tithes of all that he had*: and *Eucherius*, *Of all his Subſtance*; to whom I add *Toſtatus* and *Mercer*, who have *de omnibus rebus ſuis*: The *Chaldee* Paraphraſe alſo with *Junius* and *Tremelius*, the LXX. and Vulgar, all ſpeak generally, *He gave him Tithe of all things* (*k*); wherefore there is

(*g*) Gen. xiv. 20.

(*h*) Heb. vii. 2.

(*i*) *Selden.* hiſt. pag. 2.

(*k*) *De omnibus rebus*, C. P. Onk. & Jun. Trem. ἀπὸ πάντων, LXX. *ex omnibus* Vulg.

no

no reaſon why Mr. *S.* ſhould reſtrain it to *Tithe of Spoils only*: *Joſephus* indeed (*l*) and divers other Authors cited in the Review (*m*) do ſay, he paid *Tithe of Spoils*, but not any of them ſay it was *only Tithe of Spoils*, and *Eucherius*, who firſt ſpeaks of *Tithe of the Prey*, and then of *Tithe of his Subſtance*, ſeems to intimate that *Abraham* paid Tithe of more than Spoils alone: And though Mr. *S.* would perſwade us that St. *Paul*, Hebr. vii. 4. explains *Tithes of all* by (*δεκάτην ἐκ τῶν ἀκροθινίων*) *Tithe of Spoils*; yet if we conſult the place we ſhall find St. *Paul* adds, *Tithes of Spoils*, as a ſpecial inſtance unto the general phraſe uſed before *Tithes of all*: For the Apoſtle was to prove *Melchiſedec*'s Prieſthood greater than *Levi*'s, yea in this point of Tithing alſo, and therefore when he had ſaid *ver.* 2. that *Melchiſedec had Tithes of all*; leſt it ſhould be alleadged, that *Levi* alſo had Tithes of all, *i.e.* of all ordinary gain, he adds as a ſpecial prerogative of *Melchiſedec*, ver. 4. ᾧ καὶ δεκάτην Ἀβραὰμ ἔδωκεν ἐκ τῶν ἀκροθινίων ὁ πατριάρχης· *To whom* alſo *the Patriarch Abraham gave Tithe of the Spoils*; that is, he gave this over and above the Tithe of his own eſtate, *ver.* 2. and herein *Melchiſedec*'s Tithing exceeded *Levi*'s, who had not *alſo* Tithe of Spoils. And indeed Mr. *S.* feared to cite this Text aright, and left out the Particle [καὶ] *alſo*, which ſhews that this was ſomewhat more than the Apoſtle had ſpoken of before. But further, there is no Scripture word uſed in this Hiſtory except Ἀκροθίνια, *Heb.* vii. 4. which can be interpreted *Spoils*, and (whatever Mr. *S.* doth pretend) this word Ἀκροθίνια doth neither uſually nor principally ſignifie, *Spoils*: The Etymology of it ſhews it originally ſignifies *the Tops of heaps*, which commonly being the beſt, made the Vulgar here tranſlate it very properly *De præcipuis*; and becauſe *Firſt-fruits* were taken off from the Top of the heaps, and were of the firſt and beſt, thence Ἀκροθίνια comes to ſignifie *Firſt-fruits*, as the *Syriac* Tranſlator turns it here, and the *Arabic* to the ſame ſenſe (not *Tithe* and *Alms* as Mr. *Selden* miſtakes (*a*), but) *Tithe* and *choice Treaſures*: Nor did thoſe Eaſtern Tranſlations miſread this Text ſo much as Mr. *S.* only they make the word [καὶ] which Mr. *S.* wholly omits, to be very Emphatical

(*l*) Antiq. l. 1. cap 11.
(*m*) *Selden*'s Review. p. 450.
(*a*) See Mr. *Nettle* againſt *Selden*, pag. 24.

tical, ὧ καὶ δεκάτην— to whom beſide the Tithe the Patriarch gave of the *Firſt-fruits* or *choice Treaſures*, which confirms what we noted before: But to return to Ἀκροθίνια, all the Gloſſories aſſure us, that *Tops of heaps* and *Firſt-fruits*, are the primary and uſual ſignification thereof. *Phavorinus* gives no other ſenſe of it, nor the *Etymologicon Magnum*, *Heſychius* makes this to be the firſt ſenſe, and only as a ſecondary ſenſe ſaith it alſo ſignifies *Prey* or *Spoils*: And *Suidas* ſaith it properly ſignifies *Firſt-fruits of Fruits*, or of *Merchandize*, and they ſay alſo (ſo he brings in the other ſenſe) *of things taken in war*: which ſhews how little reaſon Mr. *S.* had to cite *Heſychius* and *Suidas* for Witneſſes, that Ἀκροθίνια chiefly ſignified *Spoils*, but finally he produces only one Greek Proverb wherein it is uſed for *Spoils*, and then adds —*indeed it elſewhere rarely occurs in this ſenſe*, pag. 3. whereas in the ſenſe of *Firſt-fruits* it occurs very often, and eſpecially in the Chriſtian Authors (*b*). Wherefore St. *Paul*'s ſaying, *Abraham gave Tithe*, ἐκ τῶν ἀκροθινίων, doth not certainly note he gave *Tithe of Spoils*, for it may properly be explained (that as he gave *a Tenth part of all*, v. 2. to note the quantity, ſo) he gave Tithe alſo of the beſt parts, to note the quality of his gift: Or if we do expound it here to ſignifie *Tithe of Spoils*, yet nothing either in the Text or in any good Author can warrant us with Mr. *S.* to ſay it was *only Spoils*, which is a limiting that general word twice uſed by the Holy Ghoſt, *Tithes of all*. If it be objected, That *Abraham* had not his whole Eſtate there to give Tithes out of at that time? I Anſwer, The Scripture ſaith not he gave it *then*, but ſpeaks indefinitely, *He gave him Tithe of all*, which may well enough be expounded, He then dedicated the Tithe of all his Eſtate by ſolemn Promiſe, and paid part of it then, and the reſt afterward; nor is it unuſual in Scripture or common Speech to ſay, *We give*, when we promiſe to give: ſo *Abraham* is ſaid to have given *Iſaac* all that he had (*c*) not by actual diſpoſſeſſing himſelf, but by promiſe, or as *Rab. Salomon* thinks, by a Deed in writing (declaring *Iſaac* his heir, and) put into the Stewards hands to ſhew to the Friends of *Rebecca*, whom he was going to woe for his Maſters

(*b*) S. *Chryſoſt.* hom. 22. in Math. xv. Tom. 5. 189. *Clem. Alexand.* Protrep. p. 32.

(*c*) Gen. xxiv. 36.

Maſters Son, ſo that he expounds *ver.* 10. *All the goods of his Maſter were in his hand*, to ſignifie *a Deed containing his gift of all*: So alſo our Anceſtors are ſaid to have given Tithes (not when they paid every years profits, but) when they made the ſolemn Promiſe: and thus *Abraham* might then give *Melchiſedec* Tithes of all his Eſtate by Promiſe, for it was not only the preſent Spoils which were of Gods gift, but all the reſt of his eſtate alſo, all that he had was beſtowed freely on him by this *moſt High God the Poſſeſſor of Heaven and Earth*, as *Melchiſedec* intimated to him. And therefore if *Abraham* did give no more but Tithe of Spoils, (or as *Ben Uziel* ſpeaks, *Of all that he brought back*) now upon this extraordinary occaſion, yet it is very probable he did ordinarily at other times give *Melchiſedec* Tithes of all that came by Gods ordinary bleſſing. To prove which let it be conſidered, that *Melchiſedec* is generally held to be *Sem*, as Mr. *S.* proves by the Teſtimonies of S. *Hierom*, *Eucherius*, the *Samaritan* Verſion, *R. Salomon*, *Galatinus*, *&c.* (*d*) to whom we may add S. *Ambroſe* (*e*), and S. *Auguſtine*, who cites it as an old Tradition, that *Canaan* fell to the ſhare of *Sem*, and that he lived there (*f*). Suppoſing therefore (as the *Jews* and the generality of Chriſtians affirm) that *Melchiſedec* was *Sem*, who according to the *Hebrew* account lived till after *Jacob* was born. He was at this time the eldeſt perſon living of *Abrahams* Family, and according to the cuſtom of that Age (wherein the eldeſt Sons had the Prieſthood) (*g*), he was the Chief Prieſt at that time. Mr. *S.* indeed queſtions whether he were *Noah*'s eldeſt Son or no; but the *Rabbins* (who he ſaith hold the contrary) do many of them expreſly affirm he was the Eldeſt (*h*), and *R. Salomon* is doubtful (*i*); however *Sem* being always reckoned firſt, either he had the Primogeniture by nature, or it was tranſferred to him, and with it the Prieſthood: And when the great High Prieſt and Anceſtor of *Abraham* lived ſo nigh to him, we need not doubt but *Abraham* and he had correſpondence before this victory, which is alſo plain from his ſo readily coming out, not only to refreſh him and his men, and to rejoyce with them in their return, but to offer up

(*d*) *Selden's* Review, p. 450.
(*e*) *Ambroſ.* Com. in Hebr. vii. ita *Lyra*, *Toſtatus*, *&c.*
(*f*) *Aug.* de temp ſer. 105.
(*g*) *Selden*, hiſt. pag. 5. & Review, pag. 452.
(*h*) Talm. tract. *Sanhedrin*, c. 8. fol. 69. *R. D. Kim.* in 1 Chron. I.
(*i*) *R. Salom. Jarchi*, in Gen. X. ver. 20.

(as *Abrahams* Prieſt) a Sacrifice of *Praiſe* to the moſt High that gave them this Victory: And when we conſider that *Mamre*, where *Abraham* dwelt, is (according to S. *Hierom*) but 22 *Roman* miles from *Jeruſalem*, or about ſeven *German* miles by the Scale in *Adricomius*'s Mapps (*k*), ſo that a late Traveller ſaith, He went out in the Morning, viewed *Hebron* and all places of note thereabouts, and came back to *Jeruſalem* at night (*l*). We have good reaſon to judge, that *Abraham* did frequently partake of *Melchiſedec*'s Miniſtry, and ordinarily received his Prayers and his Bleſſing, and 'tis likely did annually pay him Tithes, though none but this extraordinary payment be mentioned in the ſhort hiſtory of *Geneſis*. 'Tis certain the *Rabbins* had a Tradition, that *Sem* (who with them is *Melchiſedec*) was the Prieſt in ordinary of *Abraham*'s Family; for when *Rebecca* was with Child of Twins, and went to enquire of the Lord, they ſay, *She went to enquire of the Lord by Sem* (*m*), or (as *Lyra* out of them relates it) *by Melchiſedec* (*n*); they ſay alſo, *that Jacob was educated in the Tents of Sem and Heber* (*o*), and, *that he taught Joſeph what he had learned of Sem and Heber* (*p*). All which makes it highly probable, that ſo Pious a man as *Abraham* was, did ordinarily and regularly pay his Tithes to *Melchiſedec*, and though it be recorded but once, yet we can no more infer from thence, that he only paid Tithes once, than we can that *Melchiſedec* never bleſſed God but once, becauſe it is mentioned but once in Scripture: Nor is it likely that *Jacob* ſhould learn to dedicate the Tenth of all that he had, from *Abrahams* once only giving Tithe of Spoils, much leſs can we think the fame of one ſingle Act could have ſpread it ſelf ſo generally over all the *Gentile* World (as ſhall be ſhewed in the Third Chapter,) wherefore we conclude, that *Abraham* did frequently pay Tithes to *Melchiſedec*: and becauſe ſome do enquire, whether *Abraham* did offer theſe Tithes as a free gift, or paid them as a Due, I ſhall obſerve, that *Melchiſedec* was the Prieſt and the Repreſentative of the Moſt high God, to whom the Tenth was peculiarly due, and therefore it may properly be ſaid, he paid Tithes to *Melchiſedec* as Gods due: and

S. *Paul*

(*k*) Deſcrip. terræ S p. 341.

(*l*) *Bellonii* obſerv. l. 2. c. 87.

(*m*) Cald. Par. *Jonath.* in Gen. 25. 22. & Rab. *Salom.* in loc.

(*n*) *Lyra* in Gen. xxv. 22.

(*o*) R. *Salom.* & R. *Bechai* in Gen. xxv. 27.

(*p*) R. *Salom.* in Gen. xxxvii. 3.

S. *Paul* doubts not to call this Act *a paying of Tithes*, Heb. vii. 9. *Levi paid Tithes in Abraham*, and ver. 6. he ſaith, Δεδεκάτωκε, *Melchiſedec* Tithed *Abraham*, or took Tithes of him (which implies a due,) again *ver.* 2. where we read, *He gave him the Tenth of all*, the Greek is ἐμέρισεν, ſignifying, he divided, ſeparated and ſet forth a Tenth part (the very way of paying Tithes now:) And though in *Geneſis* it be ſaid, *He gave him Tithes of all*, yet the phraſe of *Giving* is often uſed in the holy Books, for the diſcharging a juſt due, ſo *Pſal.* xxix. 2. *Give the Lord honour due to his Name*; and the People are *to Give Tithes* (*q*) when they were due by a written Law; ſo to Give Tribute (*r*) is, to Pay Tribute, and to give a Servant his Hire (*s*) is, to pay him his Wages; therefore we cannot infer that Tithes were not paid as a due, becauſe *Moſes* ſaith *He gave them*, only if we critically enquire into the difference of theſe Phraſes, we may note, S. *Paul* uſes the word δέδωκεν, but once, *viz.* ver. 4. concerning *Spoils*, which intimates that *Abraham* paid Tithes in ordinary of all his uſual increaſe, but freely gave out of extraordinary Devotion the Tithe of Spoils upon this Victory: This I thought fit to remark upon this memorable Example (which Mr. *S.* ſo ſlightly paſſes over) and I infer from hence, That when an inſpired Patriarch was bleſſed by a Prieſt, who was the Type of Chriſt, and of the ſame Order that Goſpel Miniſters are now: He gave him a *Tenth part* of all that he had, having learned from Tradition or divine Revelation, that the Tenth was that part which God had appointed ſhould be given to him in acknowledgment of his bounty, and this Inſtitution and the practice which followed it, do thus far prove Tithes to be due *Jure Divino*.

(*q*) 2 Chron. xxxi. 4.
(*r*) Math. xxii. 17. & xvii. 27.
(*s*) Deut. xxiv. 15.

§. V. It hugely confirms our former Aſſertion, that *Abraham* paid Tithes of all frequently, becauſe we find *Jacob*, who had been brought up according to the religious Rites of *Abrahams* Family, ſolemnly Vowing to give God the Tenth of all, which intimates that he had ſeen frequent dedications in that Proportion. God had appeared to

him just now, and fixed all the Promises made to *Abraham* upon him and his Posterity, *Gen.*xxviii.13,14,&c. whereupon as he was now the heir of *Abrahams* blessings, he thought himself obliged to exercise *Abrahams* Piety, the sum of which is contained in the three branches of this Vow of *Jacobs*, *viz.* First, his Faith, *ver.* 21. *Then shall the Lord be my God*: Secondly, his Devotion, *ver.* 22. *And this Stone which I have set for a Pillar shall be Gods House*: Thirdly, his Gratitude, *And of all that thou shalt give me, I will surely give the Tenth to thee.* As the owning of the true God, and the dedicating a solemn place to his Worship, were derived from the known practice of *Abraham*, so was the consecrating the Tenth of all; and it is evidently grounded on the same reason, *Abraham* gave his Tenth to acknowledge, that *God was the possessor of Heaven and Earth*, and *Jacob* gives his, because *God is the giver of all that he hath*; and this reason is not at all ceremonial or proper to the *Jewish* people, but moral and equally obliging to all that know God, if they have any estate by his bounty: And if the proportion had been arbitrary, 'tis likely *Jacob* would have varied and either given more or less; but his fixing on the same part, shews the Tenth part was determined before to belong to God. And since his present circumstances made him need and desire above all things to choose such a part as would be most pleasing and acceptable to God, no doubt he well knew that this was the proportion which was agreeable to Gods will, either by the special direction of the Spirit then, as Mr. *Calvin* thinks (*t*), or rather by the practice and Tradition of his pious Ancestors, grounded upon a divine Revelation at first; but however he learned it, 'tis sure he knew this Part would please God, because he consecrates it on purpose to engage him to perform his Promises; and the Almighty abundantly proved *Jacob* was not mistaken, since he fully and liberally performed all that the good Man desired, and by giving him great plenty God did demonstrate to him and to all Mankind, that he liked and approved of the dedicating a Tenth part to his honour. And when God had thus enabled *Jacob*, upon his return we

(*t*) *Non quod suo arbitrio Deum coluerit* (*scil.* Dando decimas) *nam directio Spiritûs vice legis fuit.* Calvin. in loc.

we need not queſtion but he performed this Vow, and though the Scripture be ſilent, yet his Piety and the teſtimony of good Authors may aſſure us it was done. *He paid it at his return by offering the Tithe of all his goods,* ſaith *Joſephus* (*u*). *He performed it in Bethel, and gave the Tithe of his ſubſtance for the honour of God, unto him that was in that Age to receive it,* as *Aben Ezra* (*w*). Who was the Chief Prieſt then is not certain, but Mr. *S.* thinks it very probable it was *Iſaac*, who (as he truly affirms) was the Chiefeſt Prieſt at that time (*x*); and for any thing appears in the Text, *Jacob* paid Tithes yearly after his return: for ſince God gave him not the increaſe of one year only, but of every year, and he had vowed to give God the Tenth of all that he ſhould give him, therefore he who had every year new gifts, was obliged to acknowledge it by a new Tithing; and the Phraſe in the Hebrew, *ver.* 22. *Tithing, I will Tithe it to thee* (which we tranſlate, *I will ſurely give the Tenth to thee*) doth import frequency and exactneſs too in making of this Payment. Thus therefore we have a ſecond Inſtance of another inſpired Patriarch fixing on the Tenth part as fit to be offered and certainly pleaſing God, and Gods own approbation of this Part, together with the payment of it to a Prieſt as God's Receiver, and great probabilities of conſtant and regular Tithing long before the Law of *Moſes*. But here the Jeſuites, and Jeſuited Sectaries object, *That Jacobs Vow of Tithes was conditional, if God preſerved him in his Journey, and gave him food and rayment, and brought him back in peace*; which ſhews, *that offering Tithes was no neceſſary duty, nor would he have been obliged to it, if he had not bound himſelf thereto by Vow* (*a*). To which I anſwer, that the conditions are abſolutely neceſſary to the performance of the duty that he vowed, for unleſs his life were preſerved, and unleſs God gave him ſome Eſtate, how was it poſſible he ſhould pay Tithes; ſo that theſe conditions imply no more, then that if he lived and had any thing, though never ſo ſmall, though it were but Neceſſaries, out of that, whatever it were, more or leſs, he would give the Tenth to God: and the adding of ſuch a condition, without

(*u*) *Joſeph.* Ant. l. 1. c. 18.

(*w*) *Ab. Ezra* in Gen. 35. & *Lyra, Toſtatus, &c.* ibid.

(*x*) Hiſtor. p. 5.

(*a*) *Bellarm.* Tom. 1. controv. 5. l. 1. c. 25.

out which the duty vowed cannot possibly be performed, doth not prove the thing Vowed was no necessary duty before: Especially since it is very usual to Vow necessary duties, as when Holy Men vow to watch over their words, and to keep Gods Laws (*b*). Thus *Hannah* vowed her first-born Son to the Lord (due to him before by Expres Law, *Exod.* xiii.) and upon such a condition as is mentioned in *Jacobs* vowing Tithes, *viz.* if the Lord would give her a Son (*c*). S. *Augustine* doth highly commend our tying our selves to necessary duties by special Vow (*d*), and so do all practical Divines, and why then should it be strange that *Jacob* did so? But that which utterly baffles this Cavil is, that *Jacob* vows *the Lord shall be his God*, upon the same Conditions upon which he vows to give Tithes; and dare any say, *It was no necessary duty before this Vow was made for Jacob to have the Lord for his God?* If it were a necessary duty before this conditional Vow, then so might Tithes be also: And S. *Chrysostom* explains these conditions to be rather manifestations of his Faith, than any limitations of his Vow, for God had just now promised to be with him, &c. and though he had not yet actually performed them, yet *Jacob* was so assured of Gods truth, that out of a Heroic Trust in the Divine promises he presently engages himself to those Duties which were the just acknowledgments of such Mercies, and dedicates his Tithes before-hand, declaring thereby how much he loved and relied on God (*e*). We conclude therefore, that the Patriarchs thought it a necessary duty to pay Tithes, and that their practice with the principles on which they proceeded are evident proof, that they believed the Tenth part was due to God, by sufficient manifestations of his Will, and therefore they paid it as due *Jure Divino*.

(*b*) Psal. xxxix. 1. & cxix. 106. Nehem. x. 29. Jer. xxxiv. 8.

(*c*) 1 Sam. I. 11.

(*d*) *Quid debemus vovere, credere in illum, sperare ab illo vitam æternam, bene vivere, &c.* August. Enar. Psal. 75. Tom. 8.

(*e*) *Chrysost.* in Gen. hom. 54. Tom. 1. edit. *Savil*, p. 425.

CHAP.

CHAP. II.

Of Tithes under the Law.

§. 1. THe consideration of what hath been said concerning the Patriarchs paying Tithes, makes it probable that the *Jews* (who then newly sprang from the Loyns of these Tithe-givers, and understood that their divinely inspired Ancestors had used thus to acknowledge Gods bounty) would have payed Tithes in imitation of their Fore-fathers, if there had been no Law to enjoyn them so to do; for if the Patriarchs practice had such an influence upon the *Gentile* World (as shall be shewed in the next Chapter) it could not but have a greater effect upon their own Children and immediate Posterity: Yea, God himself seems to suppose this, because in *Moses* Law the first places that mention Tithes rather reckon them a known due, than enjoyn them to be paid. The Hebrew Text *Exod.* xxii. 29. *Thou shalt not delay to offer thy fulness or abundance*, is by the Vulgar rendred, *Thou shalt not delay thy Tithes and First-fruits*, and the *Jewish* Doctors expound it of *Tithes* (*a*), to which also the Christian Fathers do apply it. Now this Text evidently supposes they knew these to be due to God, so that the only thing to be done was to order them to pay them in due time and order. Again, when *Moses* is speaking of things Devoted to God already, so that they may not be alienated from him, nor redeemed without adding a fifth part to the Value, *Levit.* xxvii. 27. he adds, *ver.* 30. *All the Tithe of the Land, whether of the Seed of the Land, or of the Fruit of the Tree, is the Lords*; intimating that Tithe was then to be reckoned a devoted thing and due to God, before any Law had yet enjoyned the payment; and some think *Jacobs* Vow had so included his posterity, as to make Tithe a devoted thing to them; indeed

(*a*) R. R. ap. *Hottinger.* Juris *Hebræor.* Leg. 78. pag. 98.

deed God promiſed to give him the Land which he gave to his poſterity, and therefore his Vow might probably enough include not only what God gave him in his own perſon, but in his poſterity alſo. However, 'tis certain that here Tithes are claimed as Gods due *by a moſt ancient Cuſtom, of which no beginning appears,* ſaith *Grotius* on the place; for indeed they had from the beginning of the World been reckoned as Gods part, and this claim was made ſoon after the coming out of *Egypt*, and (as ſome do compute) (*b*) 28 years before the aſſignation of Tithe to the *Levites*, *Numb.* xviii. 28. yet there alſo God ſuppoſes his right to the Tenth part to have been well known, and ſaith, *I have given the Children of Levi all the Tenth in Iſrael*: He aſſigns his right, but doth not command the payment in all that Chapter. And when the Ceremonial directions (which were ſtill later) were made, they rather preſcribe the way and manner of paying Tithes under that Diſpenſation than enjoyn the thing it ſelf, which ſhews there is no reaſon to account the *Tenth* to be originally a Ceremonial Inſtitution. 'Tis true, while that Law continued, both the ancient Tithe which was aſſigned to the *Levites*, and the other two Tithes, were all due by Gods expreſs written Law, as all do confeſs; there being therefore no doubt of that, we will under this period conſider, 1. What was the method and order of *Jewiſh* Tithing; 2. How long this Law for it was obſerved; 3. How far the *Jews* Law or practice may concern Chriſtians.

(*b*) *Roberts* Reven. of Goſpel Miniſters, p. 11.

Firſt, For the *Jewiſh* manner of Tithing, Mr. *S.* ſaith, *It was never fully taught by any Chriſtian before his time, no not by the noble and learned* Scaliger, *though he undertook it in a ſingle Treatiſe* (*c*). Yet whoever ſhall compare that Treatiſe of *Scaliger* (*d*) with this Chapter of Mr. S. will find, he hath done little more than tranſcribe him, and when we have fully Examined his own performances, it is not impoſſible the Reader may think Mr. *S.* himſelf is one *of thoſe many of no ſmall Name, who groſly ſlip in reckoning and dividing the kinds of their Tithes* (*e*), as his own words are. We begin with *Firſt-fruits*, which were of two ſorts, *Bicurim* and *Therumah:*

(*c*) *Seld.* Review, chap. 2. p. 452.

(*d*) Extat. ap. Critic. ſacr. Tom. 1. p. 1322.

(*e*) Hiſt. *Tithes*, Chap. 2. §. 4. p. 17.

rumah: the first called *Bicurim* Mr. *S.* saith *were paid in Ears of Wheat, Barly, Figs, Grapes, Olives, Pomgranates and Dates,* and of those seven only; and for this he cites three Texts, *Exod.* xxiii. 19. which mentions nothing of paying it in Ears; secondly *Numb.* xv. 20. which calls this very sort of First-fruits *the Heave-offering of the Threshing floor*; thirdly, *Levit.* xxiii. 10. where there is mention of an *Omer*, with which (*R. Salomon* observes) they measured this sort of First-fruit, implying it was threshed before it was paid: so that though the *Bicurim* were paid in Ears, these Texts do not prove it. Again, the *Talmud* saith, *They set forth of First-fruits more the seven kinds* (*f*), and 2 *Chron.* xxxi. 5. it is said expresly, *they brought in the First-fruits of Corn, Wine, Oil and Hony, and of all the increase of the Field.* Deut. xxvi. 2. 'tis called *the first of all the fruit of the Earth*, and *Nehem.* x. 35. *the First-fruit of all fruits of all Trees*, is added to the former particulars, so that he hath not accurately enough taught us out of what sorts the *Bicurim* were paid. Secondly, The *Therumah* or *Heave-offering*, *Deut.* xviii. 4. was paid next to the *Bicurim*, and this he truly notes (out of *Scaliger*) ought to be a 40*th*, 50*th*, or a 60*th part*, and he that offered no more than the *sixtieth part* was said to have *an evil Eye*, a Phrase which S. *Matthew* (*Chap.* xx. 15.) had not out of the *Talmud*, but out of the Old Testament (*g*); but we need not further enquire into the manner of paying these, because they were not Tithes, only it suffices to note that both these sorts of *First-fruits* were paid before the Tithing.

(*f*) Talm. tract *Bicurim*, cap. 3. fol. 8.

(*g*) Prov. xxii 9. & xxiii. 6.

§. II. The *Jewish* Tithe Mr. *S.* divides into two sorts, as *Scaliger* had done before; but whereas *Scaliger* makes the Poor mans Tithe of the third year the same with the first Tithe, Mr. *S.* makes it the same with the second, or *Tithe of Feasts*; but it was truly a different kind from them both, and their Tithing is best divided into the first, second, and third Tithes. The first Tithe was taken out, after the First-fruits offered to the Priests, and paid to the *Levites*, but not always *at Jerusalem* (as Mr. *S.* mistakes) for *Ab. Ezra* saith, *The Levites received their first Tithe in the Country* (*h*). Nor

(*h*) *Ab. Ezra* in Deut. 14. 27.

is this Tithe appointed to be brought to *Jeruſalem*, *Nehem.* x. 37. but to be brought to the *Levites*, *that they might have Tithes in all their Cities of Tillage*; and ſince they took them in the Country, *ver.* 38. one of the Prieſts is ordered to be with the *Levites* when they took Tithes, and the *Levites* were to carry up the Tithe of this firſt Tithe to *Jeruſalem*; ſo that *R. Salomon* on this place ſaith, *The Levites take Tithes in all the Cities of Iſrael.* R. *Nachman* alſo affirms, *that the Country Levites had Tithes in the Country* (*i*), and Calvin *makes no doubt but the Levites in their ſeveral Countries did gather Tithes* (*k*), and by this means, both the Country-man was freed from the vaſt charge of carrying this firſt and largeſt Tithe to *Jeruſalem*, and the *Levites* eaſed of the charge of ſending back the remainder to their Families at home in the Country, where they needed theſe Tithes moſt, for while their courſe was in the Temple, the ſecond Tithe, and the Sacrifices, &c. maintained them plentifully. As for that place *Deut.* xii. 5. where there is mention of carrying Tithes to Gods houſe; R. *Salomon* there tells us, it is meant of the ſecond Tithe for Feaſts. Out of this firſt or *Levites* Tithe Mr. *S.* rightly obſerves they paid the Tenth unto the Prieſts; but ſince all the Twenty-four courſes of Prieſts had their ſhare in theſe Tithes, it was not properly from this Payment of the *Levites* to the Prieſts in general, that the Clergies paying Tenths to the Pope ſprung; but from an erroneous conceit which *Alex.* of *Hales*, and alſo *Lyra*, *Toſtatus*, *&c.* have entertained out of *Numb.* xviii. 28. as if the *Levites* had paid the Tenth of their Tithes to the High Prieſt only, which falſe pretence ſerved the Popes Avarice and helped to back out his claim; but it could not juſtifie it any more then that Tithe, which ſome of the *Jewiſh* Kings, and particularly (they ſay) *Solomon* had of the people over and above the *Levites* Tithe (*l*) can juſtifie that Tenth which our Kings at this day receive of all their Clergy. But to return to the Hiſtory, after the Firſt Tithe was taken out, the remaining Nine parts were not yet accounted prophane (as Mr. *S.* miſtakes) becauſe the Second Tithe was yet to be taken

(*i*) *R. Nachman* in Deut. xii.
(*k*) *Calvin.* Com. in Deut. xiv.
(*l*) *Baal Haturim* in Deut. xviii. 1. *R. D. Kimki* in 1 Sam. viii.

taken out, and carried up, either in kind, or in Mony (with a fifth part added) to be ſpent in Feaſts at *Jeruſalem*, and this is the Tithe ſpoken of *Deut.*xii. 5, & 6. and *Chap.* xiv.23. and that which *Joſephus* calls *Tithe for Feaſts* (*m*), and of this there is no diſpute, only let it be noted that the turning Tithe into Mony with a fifth part added, was not a peculiar property of this ſecond Tithe, for the Scripture*, and the Rabbins expreſly ſay (*n*) that this priviledge belonged to the firſt Tithe as well as the ſecond.

(*m*) *Joſeph.* Antiq. lib.4. cap.7. (not lib.41. as in Mr.*S.*)

* Lev.xxvii. 30,31.

(*n*) *Ab.Ezra, Abarbanel, Lyra,* & *Calvin.* in loc.

§. III. The great difficulty is concerning the Third Tithe, which Mr. *S.* makes to be the ſame with the ſecond Tithe, only what was ſpent at Feaſts in *Jeruſalem* two years, on the third year was ſpent on the poor in the Country, and that year no ſecond Tithe was ſent to *Jeruſalem* at all: But I affirm this Third Tithe for the Poor was paid over and above the two former every third year, and therefore that year is called *the year of Tithing* (*o*), becauſe there was a Tithe extraordinary paid then more than was paid in other years, as *Moſes Gerundenſis* expreſly ſaith: Nor could this poor Mans Tithe have properly born the name of *the Third Tithe*, if the ſecond had now ceaſed, yet by that name it is often called (*p*); but *Joſephus* is very plain, who brings in *Moſes* himſelf, ſaying, *Beſides the two Tithes which I have already commanded you to pay every year, one to the Levites, and the other to the holy Feaſts; there is a third Tithe to be paid every third year, for the Poor, the Widow, and the Fatherleſs* (*q*). Mr.*S.* indeed cites ſome Rabbins, who thought the ſecond Tithe ceaſed every third year; but we have beſides *Gerundenſis* and *Joſephus*, *R. Hiskuni*, and *R. Bechai* on our ſide, ſaying poſitively *the third year is called the year of Tithing, becauſe a new ſort of Tithes above and beſide the other* (*r*), and Mr.*S.* is miſtaken to call the private Comment of *Rab. Salomon* the common gloſs of the *Jews*; yea *R.Salomons* fancy there about the year of One Tithe is rejected by *Ab. Ezra*, ſo that we have better Authority for our opinion. As for the *Septuagint* Tranſlation, *Deut.*xxvi.12. ἐν τῷ ἔτει τῷ τριτῷ, τὸ δεύτερον ἐπιδέκατον δώσεις, it makes very much for us, for δεύτερον ἐπιδέκατον ſignifies *the ſecond ſuperadded Tithe*, for

(*o*) Deut.xxvi. 12.

(*p*) Τὴν τριτὴν Tobit. I. 7. *Ab. Ezra* in Deut.xiv.28. *Jun.* & *Tremel.* ibid.

(*q*) *Joſeph.* Antiq.l.4.c.8.

(*r*) *R.Hiskun.* in Deut.xiv. 28. *R.Bechai.* in Deut.xxvi. 12.

the *Levites* Tithe may be fitly called δεκάτη, *the Tithe for Feasts* ἐπιδέκατον, and the poor mans Tithe δέκατον ἐπιδέκατον. And though Mr. *S. pag.* 19. charge S. *Chrysostom* with gross ignorance in this matter, yet we affirm he explains there way of Tithing better than either *Scaliger* or Mr. *S.* for he says *they gave Tithes and First-fruits, Second Tithes*, and again *other Tithes*, and again *other Thirtieth part* (*s*); for here are reckoned up the *Levites* Tithes, the *Bicurim*, the Tithe of Feasts, and the Poor mans Tithe, beside the *Therumah*, which among the stricter *Jews* was a Thirtieth part; the enumeration (we see) is full, though being in a popular discourse the order be not exact, and *Epiphanius* (whom also Mr. *S.* taxes for ignorance) tells us the *Pharisees* gave *Tithes* and *First-fruits*, *Thirtieth* and *Fiftieth parts*, that is, their *Therumah* was a Thirtieth part, and their *Bicurim* a Fiftieth, as much more as the ordinary *Jews* paid. I shall add no more but S. *Hierom*, who lived nearer the times of *Jewish* Tithing than most of the Rabbins now extant, and conversed with divers *Jews* then, and he reckons the Poor mans Tithe a distinct Tithe from the Tithe of Feasts (*t*), which Opinion is confirmed by this considerable reason, That if no Tithe for Feasts had been paid the third year, then either Gods Service must have been neglected, or there would have been no provision for such as did attend it; and considering the next third year was the sixth upon which the seventh year followed, in which there was no Tithe at all paid of any kind, it would follow that there was no provision for the *Levites* at the Temple for two years together; wherefore we conclude, that the Poor mans Tithe paid the third year, was not instead of any other Tithe, but was paid over and beside the two former.

(*s*) *Chrysost.* Ser. 103. τῶν διαφόρων, T. 6. p. 897.

(*t*) *Hieron.* in Ezek. xlv. Tom. 4. p. 807 2.

§. IV. We come now to consider the Computation which Mr. *S.* hath taken out of *Scaliger*, in which are these Errors; First, The *Bicurim* or first ripe Fruits, (which may be estimated at the hundredth part at the least) these are wholly omitted. Secondly, So also is the Corner of the Field to be left unreaped every year (*u*), of which the *Levite* had a share

(*u*) Lev. xix. 9. Deut. xxiv. ver. 19, 20.

ſhare alſo (*w*), and this ſome ſay was the Sixtieth part (*x*), other reckon it to be the Fortieth (*y*). Thirdly, The *Therumah* was to be reckoned the Fiftieth part, which is the middle number between Sixty and Forty. Fourthly, He hath omitted the Poor mans Tithe every third year. Not to mention another Firſt-fruit paid out of the Dough, ſpoken of both in Scripture and elſewhere (*z*), ſo that after all the pretended exactneſs of theſe two great Criticks, they both fall ſhort of the true account which we will here ſubjoyn, to ſhew how much more the *Jews* paid to their Prieſthood, than the Chriſtians do now to theirs.

(*w*) *R. Sal.* on Deut. xxiv. & *Maimon.* Com. in *Maſ. Therum.* c. 1.
(*x*) *R. David* de Pomis Lex. verb. *Peah.*
(*y*) *Baal Hatturim* in Levit. xix.
(*z*) Numb. xv. 20, 21. *Philo* de Sacrif. *Cain* & *Abel* p. 148. *Aug.* queſt. in Numer. xviii.

The account of an Ordinary year, of Jewiſh Tithing.

An intire Crop, ſuppoſed to yield *Ephahs*	6000
Sum total	6000
Deduct 1. The Corner unreaped a ſixtieth part, *viz.*	100
2. The *Bicurim* and hundredth part, *viz.*	59
3. The *Therumah*, a fiftieth part, *viz.*	116
Theſe deducted, reſts to be Tithed	5725
Deduct. 1. The *Levites* Tithe	572
2. The Tithe for Feaſts	515
The deduction for Tithe	1087
Which deducted out of 5725, remains only	4638
And out of that to be deducted every third year the Poor mans Tithe, beſide the former	463
So that the third year the Husbandman had for his own uſe out of 6000 *Ephahs*, only	4175

By this account it is plain, that a *Jew* paid much above the fifth part in an Ordinary year, *viz.* 1362 *Ephahs* out of 6000; and much above a fourth part in the Third year, that

that is, 1825 *Ephahs* out of 6000: Whereas a Chriſtian would not pay out of this for Tithe more than 600.

§. V. For the Tithe of Cattle it is generally believed (as Mr. *S.* alſo ſays) that the Tenth was paid to the *Levites*, and the Firſt-born paid to the Prieſts, or Mony to redeem it; but the *Jewiſh* Lawyers (out of whom Mr. *S.* pretends to take his meaſures) contradict this, and generally ſay that the Tithe of Cattle was neither paid to *Prieſts* or *Levites*; but either the Cattel if clean, or the price if otherwiſe, were to be offered at *Jeruſalem* for Sacrifices and Peace-offerings (*a*), which though it be all one to the Countryman, who payed them fully however; yet I mention it, becauſe it is a ſtrange thing that one ſo very converſant in theſe *Rabbins*, as Mr. *S.* pretends to be, ſhould miſs ſo obvious an Opinion: But it is not certain theſe *Rabbins* are always right in the accounts of Tithing, for they unanimouſly affirm (contrary to Mr. *S.* again) that no Firſt-born of any unclean Beaſt was either to be paid or redeemed, except the firſtling of an *Aſſe*, which was not to be redeemed with Mony, but with a Lamb (*b*); hence they expound *Numb.* xviii. 15. of the *Aſſe* alone, and that *Levit.* xxvii. 27. where unclean Beaſts are mentioned, they explain of *Beaſts with blemiſh*. But it ſeems to me the Scripture plainly confutes the *Rabbins* in this matter, *Numb.* xviii. 15. and *Philo* (in whoſe time Tithes were legally paid, and) who knew better than any of them, he ſaith, *not only the Firſt-born of Aſſes, but of Horſes, Camels, and ſuch like were to be redeemed* (*c*), and this I judge to be the truer account.

(*a*) R. *Salom.* in Lev. xxvii. 34. *R. Bechai* & *Abarbanel*, ibid. *R. Salom.* in Deut. xii. 6. *R. Nachman* in Numb. xv. 10. *David de Pomis*, verb. *Corban. Maimonid. Maſſec. Becoroth*, c. 9. fol. 35

(*b*) *R. Salom.* in Exod. xiii. 13. & in cap. xxxiv. 19, 20. *R. Bechai*, ibid. *Maimon. Maſſ. Becoroth*, c. 1.

(*c*) Λύτρα δὲ κατατίθεναι τῶν ἄλλων ἵππων καὶ ὄνων, καὶ καμήλων, καὶ τῶν παραπλησίων. *Philo* de Sacerd. præm. p. 831.

§. VI, VII, VIII. The next thing properly to be enquired of here, is concerning *Small Tithes* (though Mr. *S.* have put it back into his 7*th* Section) Our Saviour tells us the *Phariſees* tithed *Mint*, *Anniſe*, and *Cummin*, *Math.* xxiii. 23. and πᾶν λάχανον, *Luke* xi. 40. all manner of Herbs, which Mr. *S.* ſays was never commended in Scripture, nor by their Canon Law requiſite, *p.* 20. yet he grants the *Rabbins* expound the word

word *Increaſe*, *Deut.* xxvi. 12. to ſignifie *all fruits of the Earth that is for Mans meat* (*d*), and λάχανον doth not ſignifie (as he pretends) *every Herb*, but only the Herbs uſed for Mans meat (*e*), ſo that the *Rabbins* do grant πᾶν λάχανον, every Herb for meat is by Gods Law tithable, and the expreſſions of Holy Scripture are ſo general, *viz. All the Tithe of the Land* (*f*), *all the Tenth in Iſrael* (*g*), *the Tithe of all thy increaſe* (*h*), that we may juſtly affirm they comprehend theſe ſmall things alſo, only in regard the value of them was inconſiderable perhaps the Prieſts did not require, nor the ordinary *Jews* pay them, only the *Phariſees* who would ſtrictly keep the Law, theſe paid even theſe ſmall Tithes exactly, and Mr. *S.* at laſt grants, *that they were of the truer ſide, becauſe Chriſt tithed this payment, and ſaid, they ought not to omit it* (*i*). After this account of the quantity and kinds of Tithes, the continuance of the Payment is next to be ſhewed, for underſtanding whereof Mr. *S.* hath well noted the uſe which Scripture mentions, and the care of the *Sanhedrin* to enjoyn the payment under the ſecond Temple; and I add, that *Tobit* is an example of juſt Tithing about that time, and the *Phariſees* in our Saviours age, S. *Paul*'s Epiſtle to the *Hebrews* (*k*), is a good evidence they were uſually and duly paid after our Saviours Aſcenſion, and Mr. *S.* hath a good proof of ſuch payment in *Nero*'s time out of *Joſephus* (*l*), who together with *Philo* are ſufficient to aſſure us they were paid as long as their Temple ſtood, and till the City was deſtroyed, which is all we need enquire after, becauſe this was as long as they were due to that Prieſthood (*m*), and God hath now aſſigned them to another and a better Prieſthood, as the *Jews*, againſt their Wills, ſeem to acknowledge, in that, ſince they are expelled out of their own land, they do not think they are obliged by the Law to pay Tithes (*n*); excepting only thoſe who live in *Aram* or *Syria* (whatever Mr. *S.* pretend) or in any other place in, or near *Judea*, are thought to be obliged ſtill, *He that hath land in Syria* (ſaith the *Talmud*) *of his own muſt pay Tithes, and if he buy the fruits before tithing, he muſt anſwer the Tithe* (*o*); yea, *Maimonides* reckons *Syria* a part of the Land

(*d*) *R. D. Kimchi* in Mich. & *R. Nachman* in Exod. xxii.

(*e*) Λάχανα καλοῦμεν τὰ πρὸς τὴν ἡμετέραν χρείαν. *Thophraſtus*, ita Rom. xiv. 2. & *Olus*, Latinis.

(*f*) Lev. xxvii. 30.

(*g*) Num. xviii. 21.

(*h*) Deut. xxvi. 12.

(*i*) Matth. xxiii. 23.

(*k*) Heb. vii. 9.

(*l*) *Joſeph.* Ant. l. 6. c. 20.

(*m*) *Suarez.* de leg. l. 9. c. 19.

(*n*) *Maimon.* ap. *Hottinger* Jur. Heb. p. 99. & alii RR. ibid. *Leo Modena*, cap. 12. p. 44.

(*o*) Talm. tract. *Megnaiſh*, c. 5. & *R. Sal.* ibid.

Land of *Iſrael* (p). But for other *Jews* diſperſed, *the more Religious of them do at this day inſtead of Tithes pay an Alms out of all gains*, viz. *Ten Crowns out of an hundred* (q), which payment is a full Tenth part, and though it be far ſhort of all the *Moſaic* Law requires, yet it anſwers the firſt or *Levites* Tithe, and is the ſame Tithe which the Patriarchs of old and the Chriſtians now do pay; that is, it is Tithe ſtripped of all the Ceremonial appendixes added under the Law, intimating, that this Tithe ever was, and ever will be due even where the Ceremonial Law is not in force. And let it be here remembred, that this firſt or *Levites* Tithe was not tied to be paid at *Jeruſalem* (as was proved before) and therefore the place which Mr. *S.* produces out of *Euſebius* (r), which argues Tithes are ceaſed, becauſe *Jeruſalem*, the place where they ſhould be paid, is deſtroyed, muſt be meant of Tithes paid after the *Levitical* manner, and peculiarly of the ſecond Tithe ſuperinduced by that Law: for the Tenth part was paid before that Law, and ever will be due to that Prieſthood to which God aſſigns them; and that *Jews* confeſſion to *Scaliger*, that they have no lawful Prieſthood left among them now, ought to convince the very *Jews*, that God hath now choſen another Prieſthood, to whom his Tenth part is due.

(p) *Maim.* tract. Dem. c. 6.

(q) *Selden* out of *Pirk. Ab.* cap. 3. *& notis* ibid.

(r) *Euſeb.* Demonſtr. Evang. l. 1. c. 1. ap. *Seld.* p. 43.

§. IX. Mr. *S.* promiſed in his Preface, *p.* 2. that he would conſider *Antiquity*, *not barely to ſhew what hath been, but to give other Light to the practice and doubts of the preſent Age.* But he hath not performed it in this Part, to ſupply which defect we will here add two Obſervations; Firſt, that Chriſtian Tithes are not demanded by virtue of the *Levitical* Law, and yet, Secondly, many things may be learned from that Law to ſtrengthen the claim of Chriſtian Miniſters to Tithes as now paid. For the *Firſt*, It is plain we do not claim Tithes now by virtue of the *Levitical* Law, for then they ſhould be paid in the quantities and kinds preſcribed in that Law, and with all the Ceremonies annext; but the Evangelical Tithes are no more but a juſt Tenth part paid before the Law, continued under it, and then called

called the First or *Levites* Tithe; so that to Mr. *S.* question, *Why not the second as well as the first* (*s*), we reply, That this first Tithe was in being before the Law, and distinguished in the Law from all the rest, for it is called *an Inheritance* (*t*), on which phrase the *Talmud* saith, *The Scripture likens the first Tithe to an Inheritance, because as an Inheritance ceaseth not, so this first Tithe ceaseth not* (*u*), the other Tithes being superinduced by the Law, those only fell with it. And whereas Mr. *S.* further questions, *How the payment of Tithes from the Laity to the Priests of the Gospel, succeeds to the payment from the Levites to the Sons of Aaron* (*w*); it is answered, It doth not succeed that payment, but the Evangelical Tithes succeed to the payment from the Laity to the *Levites*, out of which also the Priests had a share. These first and ancient Tithes were paid generally to the Ministring Clergy then; but what shares the *Levites*, and what the Priests should have, was ordered by God suitably to that dispensation, wherein the *Levites* who had most leisure were the gatherers of these Tithes, and had the biggest share, because the Priests were otherwise well provided for while Sacrificing was in use; but these *Levites* also were reckoned among (the κλῆρος) the *Clergy*, and are accounted Members of that Priesthood: so that the *Levitical* Priesthood had them by such a distribution as God saw fit to make, and therefore the best Authors make no scruple to say, that Tithes were then paid to the Priests. S. *Paul* himself saith, *The Sons of Levi, which receive the Priesthood, have a commandment to take Tithes of the People according to the Law* (*x*); where he must call the *Levites*, Priests, because the *Priests*, properly so called, took no Tithes of the People; and hence the *Rabbins* tell us, that the Priests are twenty four times called *Levites* in Scripture (*y*), and again the *Levites* are called *Priests* (*z*). Wherefore *Hecataeus* in *Josephus* saith, *The Priests of the Jews, who receive the Tithe of all Increase are very numerous*; and *Josephus* saith, *Moses commanded the People to pay Tithe to the Levites and Priests* (*a*). This Question therefore of Mr. *S.* was a meer knot in a Bulrush, and only designed to blunder, for the Priesthood had

(*s*) *Seld.* Review, p. 456.

(*t*) Num. xviii. 21, 26.

(*u*) Talm. *Rosh Hashan.* f. 1. c. 12.

(*w*) *Seld.* Review, p. 456.

(*x*) Hebr. vii. 5.

(*y*) *R. Levi* in Numb. xviii. *R. D. Kimchi* in 2 Chron. iv. 5.

(*z*) Malach. iii. 3. *In filiis autem Levi sacerdotalem intellige dignitatem. Hieron.* in loc. Tom. 5. p. 637.

(*a*) *Joseph.* Ant. l. 4. c. 4.

had these Tithes both then and now also; and as the Gospel Priesthood succeeds the *Levitical* in the performance of Divine Service, so also in its right to Tithes, the different manner of distribution of them after they are paid, suited to the several dispensations, making no real difference in the Succession; but sure none but Mr. *S.* ever dreamed, that Evangelical Tithes succeeded the meer ceremonial division of them, and that part only which then was the Priests share, for this division began with the Law, and ended when that was abrogated. I am the larger upon this distinction between the First and original Tenth part, and the other additional Ceremonies or Manners of tithing superadded by *Moses* Law, because it fully reconciles *Origen*, S. *Hierom*, and those other Fathers who expressly say Tithes were not Ceremonial, nor abrogated, to *Eusebius* and *Epiphanius*, who are produced by Mr. *S.* to prove Tithes were Ceremonial; for *Eusebius* is plainly speaking of the second Tithe for Feasts paid at *Jerusalem*, which indeed is now ceased, and was purely Ceremonial, as was shewed before: and *Epiphanius* (*b*) is arguing against the *Quarto decimani*, or those who (though agreeing with the Christians in all other things) would needs keep *Easter* on the 14*th* day of the Month, as the *Levitical* Law prescribes, on pretence they should incur the Curse of the Law, if they did not observe it at that time: against which he urges, *That* Moses *in* Deuteronomy *sets down all the Curses which concern not only the Passeover, but Circumcision, Tithing and Offerings; therefore if they would avoid one Curse, they fell into many, for they are found accursed there, who are not Circumcised, who do not Tithe, and do not offer at Jerusalem* (*c*). That is, if once they maintained that *Levitical* Curse still in force, then they must not only keep the Paschal Feast at the *Jewish* time, but in the *Jewish* manner also, with a Lamb, &c. and not only observe one duty in the Ceremonial manner, but all others, *viz.* Circumsion, Tithing, and Offering at *Jerusalem*: but indeed that Curse is not in force, and so they are not bound to do any of those duties after the Ceremonial and *Jewish* manner; it is not therefore the Thing it self about which *Epi-*

(*b*) See *Seld.* Review, p. 461.

(*c*) *Epiph.* haref. 50.

phanius

phanius is diſcourſing, but the Ceremonial manner of doing it; for *Epiphanius* and they agreed, that a Paſchal Feaſt was to be kept, but not at the *Jewiſh* time, nor in the Ceremonial manner; they agreed they were to offer, but not at *Jeruſalem*, ſo alſo they agreed Tithes were to be paid, but the Father only argues, that they were not bound to it by that *Levitical* Curſe, and conſequently not to Tithe in the Ceremonial manner: and ſince he ſaith, they agreed with the Church in all things elſe but the time of keeping *Eaſter*, we ſhall ſhew the Church then did receive Tithes, and therefore there was no difference about that, nor doth *Epiphanius* at all reckon Tithes as paid to Goſpel Miniſters among things abrogated.

But, Secondly, though we do not claim Tithes by virtue of the *Levitical* Law, yet we learn many things from it which ſtrengthen our right to Tithes now. *Firſt*, This Law, and the practice upon it, declares Gods approbation of the Patriarchs choice of a Tenth part to be dedicated to his ſervice, and teſtifies that his Miniſters ought to be his Receivers; and the continuance of this payment during this Period, makes good the Clergies preſcription againſt all others for near 2000 years together. *Secondly*, This proviſion for the *Levitical* Prieſthood, was a pattern for Chriſt in providing for Goſpel Miniſters; for S. *Paul* tells us, As God the Father had appointed the *Prieſts* and *Levites* ſhould live of Tithes and Offerings, *even ſo hath the Lord ordained, that they that preach the Goſpel ſhould live of the Goſpel (d)*; intimating that our Lord followed that pattern, ſo that as theirs was a fixed certain honourable maintenance chiefly in the proportion of a Tenth, ſo was ours to be alſo; and though not the ſame in all the Ceremonial and ſuperadded circumſtances, yet it was to be like it in the main, which it could not be if their maintenance were certain and determined, and ours uncertain, arbitrary and precarious; and thence alſo it would follow, that more care was taken of the old Prieſthood than of the new, which ſerves to a better Covenant. *Thirdly*, This Law was alſo a Guide to the Primitive Chriſtians, and taught them not to

(d) 1 Cor. ix. 13, 14.

give leſs than a Tenth to their Miniſters, not by any direct obligatory power believed to be in this Law, but *per vim ejus exemplarem* (as the Schoolmen ſpeak) by analogy and parity of reaſon: for if a meaner Prieſthood had Tithes for its proviſion, ſurely a better Prieſthood ought not to have leſs; hence the Fathers ſay, *We that have a better hope ought chearfully to give rather more than leſs* (e), and that *we muſt at leaſt come up to the Jewiſh bounty* (f), and *give as much as the Jews, who were young beginners in Religion, not leſs however than a Tenth part* (g); *for Chriſt expects our Righteouſneſs (even in point of bounty to his Service) ſhould exceed the righteouſneſs of the Scribes and Phariſees, or elſe we ſhall not enter into the Kingdom of heaven* (h). And this is the true reaſon why the Ancients frequently cite the Precepts, Promiſes and Threatnings of the Old Teſtament concerning Tithes, and apply them to Chriſtians; not (as Mr. *S.* often ſuggeſts) that they believe the *Levitical* Precepts obligatory directly to us, but that we are by parity of reaſon obliged not to give leſs; and if we be as bountiful as they were, we may expect the bleſſings promiſed to them, if not, we deſerve to ſuffer ſevere puniſhments for our covetouſneſs and impiety. *Fourthly*, We learn from the *Levitical* Law, that Chriſtians received great eaſe by the coming of Chriſt even in this point alſo, though the full Tenth part be paid ſtill, becauſe Chriſt hath abrogated all that was brought in by the Ceremonial Law, and reduced us to the Original proportion uſed among the Patriarchs, whereas the *Jews* paid ſome years thrice as much as we do. We are now free from the ſecond and third Tithe, from the reſerved Corner, the offering of Firſt-fruits, redeeming our Firſt-born of Man and Beaſt, and from many other payments to which they were bound; and yet they diſcharged all theſe dues freely (as *Philo* and S. *Chryſoſtom* tell us) (i), never repining or envying at the riches of their Clergy, who lived (on this maintenance of Gods own deſigning) almoſt in the ſtate of Princes, ſo that if any now do murmur to give not half ſo much to a better Miniſtry, under which they have better Ordinances and more uſeful Means of Grace, they diſcover

(e) *Irenæus* adverſ. hær. l. 4. cap. 34.
(f) *Hieron.* in Mal. 3.
(g) *Chryſoſt.* hom. 43. in 1 Cor.
(h) *Origen* in Numb. hom. xii.
(i) *Philo* de Sacerd. præm. ap. *Stld.* review p. 53. *Chryſoſt.* Serm. 103. Tom. 6. p. 897.

a

a ſordid Mind, and a great contempt of the holy Goſpel. Finally, The Inſtitution of a Tenth part coming from God at firſt, and being practiced by inſpired and holy Patriarchs before the Law, being approved by God, eſtabliſhed by the Law, and ſettled by a long preſcription under the *Jewiſh* diſpenſation, and there being no declaration, that God intended to repeal this proportion, this alone (if there were no more) is ſufficient to oblige Chriſtians to dedicate their Tithes for the maintenance of the Goſpel Miniſtry, nor could they be excuſed from covetouſneſs and diſregard to Gods Service, if they ſhould have given a leſs proportion.

CHAP. III.

Of Tithes among the Gentiles.

§. 1. OF the early beginning of *Tithes*, and the long continuance of them where the Law of God was known we have thus far treated, we proceed now to obſerve the vaſt extent of this practice into moſt parts of the World among the *Gentiles*, whoſe general agreement in dedicating Tithes, and frequent uſage thereof, could ſpring from no other Principles than the natural equity of this proportion, and the practice of ſome of the earlieſt Patriarchs believed to have been taught of God. In the relation of this Cuſtom Mr. *S.* hath indeed obſerved many Inſtances, but yet he ſhews great partiality in ſtriving to make it ſeem as narrow as he can; and beſides his miſtakes in the paſſages he cites, he omits very many particulars, both which ſhall here be rectified and ſupplied. We begin with the *Phœnicians*, among whom *Melchiſedec* was both a Prince and a Prieſt, and uſed to receive Tithes, ſo that

that we may be ſure Tithing was very ancient there, for the *Carthaginians* (who were a Colony of *Phœnicians* tranſplanted into *Africa* about 900 years after the death of *Sem*, *A.M.*3075) brought with them this Cuſtom from *Tyre*, to which City they uſed to ſend their Tithe by one clothed in Purple and Prieſtly Robes (*a*); and *Diodorus Siculus* more fully ſaith, that *being in great ſtreits in their Wars they feared* Hercules *of* Tyre *was angry with them, in that being deſcended thence, they had uſed in the times before to ſend to that God the Tithe of all their Profits, but becoming rich they neglected this, till their miſery made them repent and ſend it as before* (*b*); this ancient *Phœnician* Cuſtom therefore was not to pay Tithe of Spoils only (as Mr.*S.* pretends, *pag.*33.) but of all their profits. The *Grecians* alſo (who had many Rites from the *Phœnicians*) uſed to conſecrate their Tithes to the Gods: *Harpocration* ſaith, *They were wont to Tithe their Spoils of War to the Gods*; and *Didymus* more fully, *It was a Grecian cuſtom to conſecrate the Tithe of their gains to the Gods* (*c*). But Mr. *S.* ſtrives to contract theſe full expreſſions of the Ancients, and would perſwade us, that the *Grecians* paid Tithes but ſometimes, and of ſome things, and to ſome Gods, by ſpecial Vow: whereas his own Inſtances do ſhew the payment was general and very frequent, and thoſe we ſhall add will make it ſtill clearer. He grants *pag.*29, *&c.* that they conſecrated their Tithes ſo often to *Apollo*, that he was called Δεκατηφόρος, which we may tranſlate *the Tithe-taker*; but the Verſe he cites out of *Clemens Alexandrinus* was not taken out of any Inſcription at *Delphi* (as Mr.*S.* miſtakes) but out of an old Poem (now not extant) called *Europia*, from whence *Clemens* brings there two Verſes to prove there were no Statues of old at *Delphi*, but only Holy Pillars on which it ſeems they uſe to hang up their Tithes, before the making of Images was invented (which muſt needs be very ancient) (*d*). The Hymn he cites out of *Calimachus*, pag.30. ſhews, that Firſt-fruits in the proportion of a Tenth were every year ſent to *Delos* unto the ſame God; but Mr.*S.* hath omitted the two next Verſes, which expreſly ſay theſe were the Tithes of Corn (*e*). And we may

(*a*) *Juſtin.* hiſtor. l.18. p.186.

(*b*) *Diodor.Sic.* hiſt.l. 5.

(*c*) Τὰ γὰρ ἐκ τῶν πολεμίων ληφθέντα ἐδεκάτυον τοῖς Θεοῖς· Harpoc. Ἔθος ἦν Ἑλληνικὸν τὰς δεκάτας τῶν περιγινομένων τοῖς Θεοῖς καθιερῶν· Dydim.

(*d*) Ὄφρα Θεῷ δεκάτην καὶ ἀκροθίνια τε κρεμάσαιμεν Σταθμῶν ἐκ ζαθέων καὶ κίονος ὑψηλοίο· ap. *Clem. Alex. Strom.* (not 5, but) lib. 1.

(*e*) Οἱ μὲν τοι καλαμήν τε, καὶ ἱερὰ δράγματα πρῶτοι Ἀσταχύων φορέουσι· Callim. ibid.

may well ſuppoſe he had Tithes of all profits when ſo infamous a gain, as that of *Rhodope* afforded a Conſecration to him (*f*), and that this was uſual may be gathered from that other Courtezan in the old Poem, *who vows to offer the Tenth of all her gains to Venus* (which Mr. *S.* omits) (*g*). The *Siphnians* paid a yearly Tithe of their Mines (*h*), and it was doubtleſs paid as a due, becauſe upon their omitting it, they loſt their Mines by the juſtice of the Gods (*i*). But becauſe Wars are the ſubject of moſt Hiſtories, thence it come to paſs, that (though other Tithes were paid, yet) there is moſt frequent teſtimonies of Tithe of Spoils. The *Crotonians* vowed ſuch a Tenth before their War againſt the *Locrians* (*k*). The *Phocians* made (not only two as Mr. *S.* miſtakes, but) four Statues of the Tithe of the Mony gotten at their victory over the *Theſſalians* (*l*). *Xenophon* alſo relates, *that* Ageſilaus *made ſo profitable a War in the leſſer* Aſia, *that in two years time he ſent to the God at* Delphos *a Tithe worth more than* 100 *Talents* (*m*); by which it ſeems the paying this Tithe was ſo uſual, that the whole value of the Spoils were to be known thereby. The ſame *Ageſilaus*, after a Victory over the *Thebans*, went to *Delphos*, and there out of his Spoils conſecrated a Tithe to the God not leſs than a 100 Talents (*n*). So likewiſe *Agis*, another General of the *Lacedemonians*, after the War with the *Eleans*, went and offered his Tithe at *Delphos* (*o*); theſe I have more particularly remarked, becauſe Mr. *S.* ſlightly paſſes them over: But to go on, *Cymon* the *Athenian* General being Conqueror at *Eurymedon*, *took out the Tenth of the Spoils and dedicated them to the God* (*p*), that is, to *Apollo*, who is alſo meant in the ſame *Diodorus*, where he relates how the *Argives* having ſubdued the *Mycenians*, *conſecrated a Tenth out of their goods to the God* (*q*). *Maximus Tyrius* alſo mentions *Lyſanders* offering the Tithes of his gains in War to the Gods (*r*), (which Mr. *S.* hath omitted) He ſpeaks generally, becauſe, (as Mr. *S.* confeſſes) it was not *Apollo* only to whom theſe Tithes of Spoils, or rather gains were offered, for others ſometimes were joyned with him. *Pauſanias*, after his Victory over *Mardonius*, out of the Tithes

(*f*) *Herodot.* Euterp. l. 2. p. 160.
(*g*) Antholog. l. 6.
(*h*) *Herodot.* l. 3. p. 210.
(*i*) *Pauſan.* hiſtor. Græc.
(*k*) *Juſtin.* hiſtor. l. 20. p. 193.
(*l*) *Herodot.* Uranl. 8. p. 548.
(*m*) *Xenoph.* Orat. de *Ageſilao*, pag. 519.
(*n*) Idem hiſt. Græc. l. 4. p. 406.
(*o*) Idem ibid. l. 3. p. 384.
(*p*) *Diodor. Sic.* l. 11. p. 270.
(*q*) Idem ibid. pag. 276.
(*r*) *Max. Tyr.* diſſert. 14. p. 142.

that we may be sure Tithing was very ancient there, for the *Carthaginians* (who were a Colony of *Phœnicians* transplanted into *Africa* about 900 years after the death of *Sem*, *A.M.*3075) brought with them this Custom from *Tyre*, to which City they used to send their Tithe by one clothed in Purple and Priestly Robes (*a*); and *Diodorus Siculus* more fully saith, that *being in great streits in their Wars they feared* Hercules *of* Tyre *was angry with them, in that being descended thence, they had used in the times before to send to that God the Tithe of all their Profits, but becoming rich they neglected this, till their misery made them repent and send it as before* (*b*); this ancient *Phœnician* Custom therefore was not to pay Tithe of Spoils only (as Mr.*S.* pretends, *pag.*33.) but of all their profits. The *Grecians* also (who had many Rites from the *Phœnicians*) used to consecrate their Tithes to the Gods: *Harpocration* saith, *They were wont to Tithe their Spoils of War to the Gods*; and *Didymus* more fully, *It was a Grecian custom to consecrate the Tithe of their gains to the Gods* (*c*). But Mr. *S.* strives to contract these full expressions of the Ancients, and would perswade us, that the *Grecians* paid Tithes but sometimes, and of some things, and to some Gods, by special Vow: whereas his own Instances do shew the payment was general and very frequent, and those we shall add will make it still clearer. He grants *pag.*29, *&c.* that they consecrated their Tithes so often to *Apollo*, that he was called Δεκατηφόρος, which we may translate *the Tithe-taker*; but the Verse he cites out of *Clemens Alexandrinus* was not taken out of any Inscription at *Delphi* (as Mr.*S.* mistakes) but out of an old Poem (now not extant) called *Europia*, from whence *Clemens* brings there two Verses to prove there were no Statues of old at *Delphi*, but only Holy Pillars on which it seems they use to hang up their Tithes, before the making of Images was invented (which must needs be very ancient) (*d*). The Hymn he cites out of *Calimachus*, pag.30. shews, that First-fruits in the proportion of a Tenth were every year sent to *Delos* unto the same God; but Mr.*S.* hath omitted the two next Verses, which expresly say these were the Tithes of Corn (*e*). And we may

(*a*) *Justin.* histor. l.18. p.186.

(*b*) *Diodor.Sic.* hist.l. 5.

(*c*) Τὰ γὰρ ἐκ τῶν πολεμίων ληφθέντα ἐδεκάτυον τοῖς Θεοῖς· Harpoc. Ἔθος ἦν Ἑλληνικὸν τὰς δεκάτας τῶν περιγινομένων τοῖς Θεοῖς καθιεροῦν· Dydim.

(*d*) Ὄφρα Θεῷ δεκάτην καὶ ἀκροθίνια τε κρεμάσαιμεν Σταθμῶν ἐκ ζαθέων καὶ κίονος ὑψηλοίο· ap. *Clem. Alex. Strom.* (not 5, but) lib. 1.

(*e*) Οἱ μὲν τοι καλαμήν τε, καὶ ἱερὰ δράγματα πρῶτοι Ἀσταχύων φορέουσι· Callim. ibid.

may well ſuppoſe he had Tithes of all profits when ſo infamous a gain, as that of *Rhodope* afforded a Conſecration to him (*f*), and that this was uſual may be gathered from that other Courtezan in the old Poem, *who vows to offer the Tenth of all her gains to Venus* (which Mr. *S.* omits) (*g*). The *Siphnians* paid a yearly Tithe of their Mines (*h*), and it was doubtleſs paid as a due, becauſe upon their omitting it, they loſt their Mines by the juſtice of the Gods (*i*). But becauſe Wars are the ſubject of moſt Hiſtories, thence it come to paſs, that (though other Tithes were paid, yet) there is moſt frequent teſtimonies of Tithe of Spoils. The *Crotonians* vowed ſuch a Tenth before their War againſt the *Locrians* (*k*). The *Phocians* made (not only two as Mr. *S.* miſtakes, but) four Statues of the Tithe of the Mony gotten at their victory over the *Theſſalians* (*l*). *Xenophon* alſo relates, *that* Ageſilaus *made ſo profitable a War in the leſſer* Aſia, *that in two years time he ſent to the God at* Delphos *a Tithe worth more than* 100 *Talents* (*m*); by which it ſeems the paying this Tithe was ſo uſual, that the whole value of the Spoils were to be known thereby. The ſame *Ageſilaus*, after a Victory over the *Thebans*, went to *Delphos*, and there out of his Spoils conſecrated a Tithe to the God not leſs than a 100 Talents (*n*). So likewiſe *Agis*, another General of the *Lacedemonians*, after the War with the *Eleans*, went and offered his Tithe at *Delphos* (*o*); theſe I have more particularly remarked, becauſe Mr. *S.* ſlightly paſſes them over: But to go on, *Cymon* the *Athenian* General being Conqueror at *Eurymedon*, *took out the Tenth of the Spoils and dedicated them to the God* (*p*), that is, to *Apollo*, who is alſo meant in the ſame *Diodorus*, where he relates how the *Argives* having ſubdued the *Mycenians*, *conſecrated a Tenth out of their goods to the God* (*q*). *Maximus Tyrius* alſo mentions *Lyſanders* offering the Tithes of his gains in War to the Gods (*r*), (which Mr. *S.* hath omitted) He ſpeaks generally, becauſe, (as Mr. *S.* confeſſes) it was not *Apollo* only to whom theſe Tithes of Spoils, or rather gains were offered, for others ſometimes were joyned with him. *Pauſanias*, after his Victory over *Mardonius*, out of the Tithes

(*f*) *Herodot.* Euterp. l. 2. p. 160.
(*g*) Antholog. l. 6.
(*h*) *Herodot.* l. 3. p. 210.
(*i*) *Pauſan.* hiſtor. Græc.
(*k*) *Juſtin.* hiſtor. l. 20. p. 193.
(*l*) *Herodot.* Uran. l. 8. p. 548.
(*m*) *Xenoph.* Orat. de *Ageſilao*, pag. 519.
(*n*) Idem hiſt. Græc. l. 4. p. 406.
(*o*) Idem ibid. l. 3. p. 384.
(*p*) *Diodor. Sic.* l. 11. p. 270.
(*q*) Idem ibid. pag. 276.
(*r*) *Max. Tyr.* diſſert. 14. p. 142.

Tithes of that Prey preſented a *Tripos* of Gold to *Apollo* at *Delphos*, and two brazen Statues, one to *Jupiter Olympus*, another to the *Iſtmian Neptune* (*r*). But moſt memorable is that account in *Xenophon*, how he himſelf and every *Grecian* Captain after that *Aſian* Expedition conſecrated the Tithe of their gains to *Apollo* and *Diana* of *Epheſus*; and *Xenophon* having firſt given *Apollo* his part, with *Diana's* part purchaſed a Field, and built a Temple and Altar to the Goddeſs, and after that he conſecrated the Tithe of the Fruits of the Fields for Sacrifices, and inſtituted a Feaſt, wherein *Diana* out of this Land and theſe Tithes furniſhed all that came to it with Meal, Bread, Wine, Junkets and Mony, as alſo with her Part of the Cattel fed in the ſacred Paſtures, or taken in Hunting (*s*). So that here was a Temple endowed with Tithes among the very Heathens; but whether *Apollo*, *Diana*, or *Jupiter* (*t*) had theſe Tithes in this or that particular place, it is plain that to ſome Gods or other the Tenth was uſually paid, becauſe that was looked on to be the part competent to a Deity, as appears by *Cypſelus* his reſpect thereto, when he vowed all the Citizens goods if he could get the City (*u*). And doubtleſs it was a very ancient and known Cuſtom in thoſe parts of the World, becauſe when *Cyrus* had conquered *Crœſus*, and was about to ſpoil *Sardis*, *Crœſus* deſirous to ſave the goods of his Citizens, admoniſhed *Cyrus* (not *Cyrus* admoniſhed *Crœſus*, as Mr *S.* groſly miſtakes, *pag.* 31.) that if he would publiſh among his Souldiers, and put them in mind, *That the Tithe of the City muſt neceſſarily be given to Jupiter*, they would not dare to touch any thing, no not in the heat of their Victory; and *Crœſus* hoped, being thus put off at preſent, the Citizens might give liberal gifts to the Souldiers in cool blood, which was much better than for them to be rifled (*w*), this happened *An. Mun.* 3046; and it is a fair proof that the opinion of the Sacredneſs of Tithes was well rooted in Mens minds then, ſince it had ſuch influence on the *Perſian* Souldiers minds as to ſtay their hands from pillaging a rich and noble City. In other places *Juno* had the Tithe, for the Merchants of *Samos* dedicated to her

(*r*) *Herodot.* Calliope l. 9. p. 633. *Diod. Sic.* l. 11. pag. 259.

(*s*) *Xenoph.* exped. *Cyr.* l. 5. pag. 274.

(*t*) *Pauſan.* hiſt. Græc. in El. 1. & *Phocenſ.*

(*u*) *Ariſtot.* Oecon. l. 2.

(*w*) *Herodot.* Clio. l. 1. p. 43.

a

a Tithe of their gains, and out of it made (not as Mr. *S.* calls it, a *Cup*, but) a *Laver* or *Kettle* ſo great, that ſix Talents (which is above 1100 *l.*) were beſtowed on it, and the three Statues ſupporting it were ſeven Cubits high in a kneeling poſture (*x*). The *Athenians* often dedicated their Tithe to *Pallas*, to whom out of the Tithe of what they got for redemption of Captives they preſented a rich Chariot (*y*); that Goddeſs alſo had the Tithe of all confiſcated goods there (*z*), but it was not that ſort of Tithe only (as Mr. *S.* pretends,) but all other Tithe, which the *Atticks* called ἐπιδέκαλον, as *Harprocration* tells us. And ſurely Tithing muſt be very ancient in *Greece*, ſince *Mars* himſelf is recorded to have dedicated his Tithe to one of the *Genii* that firſt taught him to be a Souldier (*a*); to this we add that dedication adviſed by *Moxus*, of the Tenth of all the *Lydians* goods to the Gods (*b*), and that out of *Thucidydes* where the *Athenians* vow the Tenth part of *Lesbos* to the Gods (*c*); but it is no wonder if the Men of *Athens* dedicated the Tenth of their foreign acquiſitions, ſince they uſually paid Tithe of all their goods at home, which when ſome former Princes had ſeized to their own uſe, *Piſiſtratus* tells *Solon*, he had reſtored to the uſe of the Gods for publick Feſtivals (*d*); a full proof of which Tithing all gains at *Athens* we have in that jeering Comedy of *Ariſtophanes*, where he repreſents *Cleon* complaining of *Agoracutus* (a great Stateſman, but there comically deſcribed as a ſeller of Tripes) *for detaining the Tithe of his Tripes belonging to the Gods*: where the Scholiaſt notes, that the Comedian ſatyrically puts, Tripes, for Eſtates and Means, *that he did not give the Tenth part of his Eſtate to the Gods* (*e*). So that this is no proof that Cooks alone paid the Tithe of their Meat killed at *Athens*, but that all others paid the Tithe of their whole Eſtate: indeed the Scholiaſt there ſays, *The Cooks uſed to give the Tenth of what they killed to the Magiſtrates*: which was wont, as all other Tithes, to be ſpent in the Feſtivals of the Gods, as we may gather from *Piſiſtratus* Letter cited before; yea, *Demoſthenes* calls it *Sacriledge* in *Androtion* and *Timocrates*, to detain the Tenths due to

(*x*) *Herodot.* Melpom. l. 4. p. 314.

(*y*) *Herodot.* Terp. l. 5. p. 365.

(*z*) *Xenoph.* hiſt. Græc. l. 1. p. 350.

(*a*) *Lucian.* de Saltatione, p. 506.

(*b*) *Suidas* ver. Μόξος, p. 600.

(*c*) *Thucyd.*

(*d*) *Diog. Laert.* vit. *Sol.* p. 36.

(*e*) Schol. R. in *Ariſtop.* ἱππεῖς.

Pallas, and the fiftieth parts of the other Gods (*f*); and it ſeems by *Cleon*'s threatning in *Ariſtophanes*, that men might be complained of to the Civil Magiſtrate, and puniſhed for not paying Tithes. For it was a very ancient *Attic* Law, Θεὸς χάρπους ἀγάλλειν, *to honour the Gods with their Fruits*, which *Porphyry* explains by ἀπαρχὰς ποιεῖσθαι (his word for giving Tithes) and cites *Hermippus* and *Xenocrates* to prove it was a Law of *Triptolemus* (contemporary with *Moſes*) and renewed by *Draco* to be an everlaſting Decree never to be repealed, *That all the Inhabitants of* Attica *ſhould worſhip the Gods according to their Eſtates, with Firſt-fruits and offering of Wine every year* (*g*). The ſame Author alſo relates out of *Heſiod* (one of the oldeſt Poets) that the Gods had utterly deſtroyed an Atheiſtical and irreligious People called *Thoes*, becauſe they paid no *Firſt-fruits*, as they ought to have done (*h*), which Divine Judgment muſt have been long before *Heſiod*'s time, and even then it ſeems it was ſo unuſual an impiety, that the deſtruction of that People was belived to proceed from that Cauſe; yet Judgments are not wont to be ſent upon whole Nations for omitting arbitrary and accidental acts of extraordinary devotion: 'tis plain therefore this was a conſtant, ancient, and juſt payment in all *Grecian* Countries, which gave occaſion to that common Proverb of deſcribing a very wicked perſon by this phraſe, *One that eats of that which had not been ſanctified, viz.* by firſt ſeparating the Gods part out of it (*i*). And this general practice cauſed the word Δεκατεῦσαι, *to Tithe*, to be put for καθιερῶσαι, *to Conſecrate*, becauſe all Conſecrations were wont to be in the proportion of a Tenth. And Mr. *S.* doth falſly pretend, that the word Δεκατεῦσαι only ſignifies a *ſpecial conſecration* of young Maids at *Athens* to *Diana*, as his own Authors fully ſhew, who tell us, that the uſual and proper ſenſe of Δεκατεῦσαι was *to Conſecrate* in general, and that this particular conſecration of young Maids was a private and rare ſenſe of the word (*k*); yea *Didymus* in *Harpocration* (in the place cited by Mr. *S.*) ſaith, *though* Lyſias *uſe it for that Conſecration of young Maids, yet* Δεκατεῦσαι *properly ſignifies* to Conſecrate, *becauſe it was the* Grecian *cuſtom to Conſecrate*

(*f*) *Demoſth.* orat. in *Androt.*

(*g*) *Porphyr.* de abſtin. l. 4. §. ult. p. 179.

(*h*) Idem ibid. l. 2. §. 8. p. 56.

(*i*) Ἄδυτα ἐδέειν. Prov.

(*k*) *Harpocr.* in verb. Δεκαδίειν, & ibid. *Didymus.* *Heſychius* verb. Δεκαδίειν. Etymologus eodem verbo, apud *Mountag.* pag. 516.

ſecrate the Tithe of their gains to the Gods: which evidently proves it a general Cuſtom over all *Greece*, which had given occaſion to this phraſe or ſpeech, and not a particular local cuſtom of ſome one City, like offering at Weddings in *England*, to which Mr. *S.* unjuſtly likens this general practice; the Cuſtom of one City cannot be called an *Engliſh* Cuſtom, nor if ſome men only, and at ſome times, and of ſome things, and in ſome places only had paid Tithes, could it properly be ſaid *paying Tithes was a* Grecian *Cuſtom*; wherefore Mr. *S.* unjuſtly ſaith, *Thoſe old Grammarians deceive, and are deceived, if they mean that all paid their Tithes in* Greece, *and that of every kind of their ſpoils or abundance* (*l*). For they muſt needs know the uſe of *Greece* better than He, and beſides his own Inſtances with thoſe we have added, do prove it was a conſtant and general practice eſtabliſhed by Law, expected by the Gods, and performed annually of things yearly increaſing, and extraordinarily of extraordinary gains, ſuch as Spoils in War. We have proved they have tithed Spoils, Corn, Wine, and all mens ſubſtance, Merchandize, and all Profits, and counted it wicked to neglect it, and what can be expected more (at this diſtance of time) to prove a general *Grecian* Cuſtom? It is not likely or poſſible that all particular Acts ſhould be recorded, but here is evidence ſufficient that ſome Gods or other always had the Tenth part of all their gains, and that the proportion of Tenth was ſo conſtantly uſed in all theſe payments, that in common ſpeech it was all one to ſay *I Tithe*, or *I Conſecrate*.

(*l*) *Stld.* hiſt. pag. 32.

§. II. From the *Grecians* we paſs to the *Romans*, of whom there is a Teſtimony as general, as that of *Didymus* for *Greece*; for *Feſtus* in *P. Diaconus* ſaith, *Decimæ quæque veteres Diis ſuis offerebant, The ancient* (Romans) *offered every ſort of Tithe to their Gods* (*m*). *Scaliger* and *Selden* indeed do both accuſe *Paulus Diaconus* for falſifying this Paſſage, but neither of them ever ſaw *Feſtus* his Original, which *Paulus* doth contract; and the ground of both their quarrels is, becauſe it ſuits not their private Opinion, and thence it

(*m*) *Feſtus* ver. Decimæ, ap *P. Diacon.* p. 47.

is that they differ in their exceptions, and each would mend it to comply with his own Opinion: *Scaliger* will not have it *to the Gods in general, becauſe they only did it* (he ſays) *to Hercules* (*n*); but Mr. *S.* by many Inſtances of the *Romans* paying Tithes to other Gods ſhews, that *Scaliger* did ill to tax *Paulus Diaconus* for this word [*Diis*], and yet while he proves *Scaliger* was miſtaken, he abſurdly ſaith, p. 29. *Paulus is well taxed for it by the Divine* Scaliger: but the truth is he is unjuſtly taxed by them both, for Mr. *S.* alſo (meerly by gueſs, and becauſe it confutes his falſe Opinion) he quarrels with *Decima quæque*, every ſort of Tithe, and would perſwade us the *Romans* did not pay Tithe of every thing, only ſome did it, at ſome times, and of ſome things (*o*). But firſt ſurely, *Paulus Diaconus*, who ſaw *Feſtus* and many Authors now loſt, and lived nearer the time of this practice, muſt needs know the *Roman* Cuſtoms better than Mr. *S.* who grants *Paulus* was a Man of great knowledge and reading for the Age he lived in (*p*); and though he ſcornfully ſay *he ignorantly abridged Feſtus*, and is often guilty of groſs miſtakes, as great a Critic as Mr. *S.* hath fully vindicated *Paulus* from every part of this charge (*q*), which being remote to our Queſtion we may omit, eſpecially ſince the Inſtances which Mr. *S.* himſelf brings, with thoſe we ſhall add as we go along, will abundantly prove *Paulus* is in the right, and that the *Romans* did uſually offer all ſorts of Tithes to their Gods. We begin with the Contents of Mr. *S.* his Third Chapter, where he ſaith they gave Tithes of Spoils, of Merchandize, and of their Eſtates; and truly *Hæc tria ſunt omnia*, there can nothing be Tithable which comes not under one of theſe heads: but we proceed to particulars; He relates out of *Plutarch, that the rich* Romans *uſed to Tithe their Eſtates to* Hercules (*r*), yet deſigning to leſſen every thing, he pretends this was a ſpecial devotion of ſome of the Sons of Fortune, whereas *Plutarch* ſpeaks not of any Special devotion, nor doth he ſay that the Poor did it not; and *Diodorus Siculus* expreſly ſaith, *Many of the* Romans, *not only of meaner Eſtates, but of the very rich men, conſecrated their Tithe to* Hercules, *for* Lucullus

(*n*) *Scalig.* caſtigat. in *Feſt.* pag. 55. verbo *Decima.*

(*o*) *Seld.* hiſt. pag. 28.

(*p*) Review, pag. 457.

(*q*) *Mountagu* againſt *Seldn*, p. 422.

(*r*) *Plut.* in quæſt. *Roman.*

cullus *the richeſt* Roman *of his time, taking an account of his Eſtate, offered all the Tithe to the Gods, making frequent and coſtly Feaſts* (*s*). So likewiſe *Sylla* offering the Tenth of his Eſtate to *Hercules*, made ſumptuous Feaſts to the People (*t*), (which Mr. *S.* hath omitted) as alſo that of *Caſſius*, whoſe Eſtate being computed before his *Parthian* Expedition to be 7100 Talents, the Tithe to *Hercules* is mentioned as a uſual charge (*u*.) 'Tis true, Hiſtorians take moſt notice of the Tithes of the Rich, becauſe they were moſt publick and remarkable; but it is like all did it, ſince *Varro* ſays, *Our Forefathers uſed to vow the Tithe to* Hercules, *nor did Ten days paſs without ſuch a Conſecration, by which the People were feaſted on free-coſt, and ſent home with Lawrel Crowns* (*w*), wherefore it muſt needs be very frequent; and the next Inſtance ſhews it was very ancient, for old *Caſſius* in *Aurelius Victor* reports, that in *Evanders* days (*An. Mun.* 2710, not much above 200 years after the *Iſraelites* were ſettled in *Canaan*) one *Reccaranus* of *Greek* extraction, a Shepherd of great bulk and ſtrength, called *Hercules*, becauſe he excelled others in ſhapes and power; this *Reccaranus* having found his Oxen that were ſtollen from him, dedicated an Altar under the *Aventine* Mount *Inventori Patri* (that is, probably to *Jupiter*) calling it the Greateſt, and teaching them to conſecrate their Tithes there, for it ſeemed more fit to him that the Gods ſhould receive that honour, than their Kings (to whom 'tis likely Tithes had been paid before) whence it came to paſs, after this *Hercules* was Deified, *Ut Herculi decimam profanari mos eſſet*, as *Victor* obſerves (*x*). This is the true account of that Hiſtory which Mr. *S.* groſly miſtakes, ſaying, that *Reccaranus* taught them to offer Tithes to *Hercules*, when as indeed *Reccaranus* was *Hercules* himſelf; and again Mr. *S.* raſhly blames *Dion. Halicarn.* as if he falſly reported, *that* Hercules *himſelf firſt ſpent the Tithe of what he took from* Cacus, *in a Feaſt with* Evander (*y*), when as that Author exactly follows old *Caſſius*, and Mr. *S.* himſelf is in the miſtake, both in the ſtory it ſelf and in his inferencs from it, as if Tithes were but ſometimes paid at that Altar, for *Victors* words of *Mos eſſet* ſhew it was a Cuſtom; and *Halicarnaſſ.* ſaith,

(*s*) *Diodor. Sic.* (non libro 5. ut ap. *S.* ſed) l. 4.

(*t*) *Plutar.* vit. *Syllæ.*

(*u*) Idem vit. *Craſſi.*

(*w*) *Varro* ap. *Macrob. Satur.* l. 3. cap. 12.

(*x*) *Caſſius* ap. *Aurel. Victor*, orig. Gent. *Rom.*

(*y*) *Seld.* Review, p. 458.

(z) *Halicar.* Rom. Antiq. l. 1.

(a) *Diodor. Sic.* l. 4.

(b) *Plutar.* vit. *Camilli* & *Liv.* libr. 5.

(c) *L. Mummius* Seld. p. 26.

(d) *Cato* de re ruſtica, c. 132.

(e) *Servius*, Æn. l. 3. com. 21.

(f) *Plin.* nat. hiſt. l. 12. c. 14.

(g) *Ulpian*, ita *Juſtin.* Inſt. l. 1. Tit 2. §. 9.

(h) *Tertul.* de Coron. militi, cap. 4. p. 103.

(i) *Servius*, ad Æn. 8. com. 30.

(k) *Plautus* in *Sticho.*

ſaith, *Tithes were frequently offered there according to Vows* (z), *Diodorus Siculus* affirms alſo, *that* Hercules *did foretel that after his Canonization, whoſoever conſecrated Tithe to him ſhould be proſperous, whence the Cuſtom continued* (he ſaith) *unto his time* (a), which was to the days of *Julius Cæſar*. So that it was a Cuſtom which began early and continued long; and though Mr. *S.* confidently aſſerts, *This payment was not required by their Pontifical Law*, yet (the Books of that Law now being loſt) he cannot be ſure of the truth of what he ſaith, and *Camillus* his adviſing with the moſt learned of the Prieſts about performing a Vow of Tithes (b), implies, there were Precepts in the Pontifical Law concerning it, and thoſe Phraſes of *Moribus antiquis* (c), *Fieri oportet* (d), *Jovi aliquod ex pradâ debeatur* (e), do confirm that Suppoſition, eſpecially ſince there were Laws in *Greece* for Tithing, whence the Cuſtom ſeems to be derived; and there was a Law for it in *Arabia* alſo, who had learned this Rite from the *Phœnicians*, as the *Greeks* alſo did (f). But if there were no written Law for it, yet *an ancient Cuſtom derived from unwritten Tradition uſes to be obſerved for a Law* (g), ſaith *Ulpian*, and *Tertullian* tells us, *Cuſtom in Civil matters, where Laws are ſilent, paſſes for a Law* (h). But to proceed, Merchants alſo uſed to Tithe their gains to *Hercules*, as appears from the Example of *Herſennius*, who having got by Merchandizing, dedicated a Tithe of his gains to *Hercules*, and (which Mr. *S.* omits, *Review* p. 458.) having done it again, as he was going to Sea, he was ſet on by Pirates, but fought valiantly and came off a Conqueror (i); yea, 'tis very likely there was a known Law or Cuſtom equivalent to it, that *Hercules* ſhould have the Tenth of all Wares ſold, ſince he in *Plautus* ſaith, *He had need ſell as dear as was poſſible, that he might give* Hercules *the Tenth part* (k), for the dearer he ſold, it ſeems the greater was the Tithe, and ſurely it was very common when *pars Herculana*, *Hercules* his part is put for the Tithe; and becauſe it was given liberally and of the beſt, thence *edecumata* came to ſignifie the choiceſt things, and *fluctus decumanus*, the biggeſt Waves, which occaſion'd *Tertullian* alſo to reckon *the Herculean Tithes* among

among the Inſtances of the *Roman* prodigality (*l*), and we may judge that all ſorts of Men offered theſe Tithes of their gains, ſince it was thought next to impoſſible for a Prodigal to ſpend *Hercules* gains thereby (*m*). Yet all theſe Inſtances are of Tithes of Mens Eſtates dedicated and paid to *Hercules* in peace, only *L. Mummius* is brought by Mr. *S.* as an Example of dedicating Spoils of War to the ſame God, under the name of *Sanco Semipatri* (*n*); but the Inſcription in which that dedication is recorded, ſaith it was done *Moribus antiquis, according to the ancient Cuſtom,* which ſhews it had been uſually done by others long before and very frequently; and that other phraſe, that he gave *Herculi, Decumam veræ rationis,* plainly ſhews they computed exactly in order to paying his Tithe juſtly. And now if it be enquired, why *Hercules* is moſt frequently mentioned as the receiver of Tithes among the *Romans?* I reply, becauſe he was one of there chiefeſt and ancienteſt Deities, his Rites (ſaith *Livy*) were firſt of any taken into uſe by *Romulus* (*o*), and ſcarce any Region or part of *Italy* can be found where this God is not worſhipped, ſaith another Hiſtorian (*p*), for which cauſe *Virgil* calls him *the great Son of* Amphytrio, *For* (ſaith *Servius* there) *every one thinks the God he worſhips to be the Greateſt*: So that if any one God in any Country had Tithes paid him before any others, it is becauſe he was the chief God of that place. So in *Arabia* (whether the uſe of Tithing came from *Melchiſedec* and the *Phœnicians*) *there was a Law that* (not the Merchant, as Mr. *S.* miſtakes, but) *the Owner ſhould pay Tithe of his Frankinſence to the God* Sabis, *whoſe Prieſts received it by meaſure, not by weight, before the Owner might ſell it* (*q*). The like Law was in Æthiopia of paying Tithe of *Cinnamon* to their God *Aſſabinus*, the Prieſt taking the Gods part out before the Merchant might buy (*r*). This *Sabis* and *Aſſabinus* doubtleſs was the ſame God, and probably had his name from the Hebrew, *Sebaoth*, the Title of the Lord of Hoſts, though the Greek *Authors* take it for a name of *Bacchus* (*s*), however this was the chief God of theſe Countries. But to return to the *Romans*, though *Hercules* had Tithes moſt frequently

(*l*) *Tertul.* Apolog. c. 39.

(*m*) *Plaut.* Moſtel. Act. 4.

(*n*) Putabant hunc eſſe *Sancum* à *Sabinâ* linguâ & *Herculem* à Græcâ. *Varro* de linguâ Latinâ, l. 4.

(*o*) *Liv.* hiſt. l. 1.

(*p*) *Dion Halicarn.* l. 1.

(*q*) *Plin.* nat. hiſt. l. 12. c. 14. pag. 252.

(*r*) Id. lib. 12. c. 19. p. 254.

(*s*) *Heſych.* ver. Σαβάζιος, Scholi *Ariſtoph.*

ly among them, yet not only he, for the *Pelasgi*, who traded by Sea, gave the *Tenth of their gain by Merchandize to* Apollo *at* Delphos (*t*). And that other branch of the same People seated in *Umbria*, being punished with a barren year for the neglect of this duty removed the Judgment by Vowing δεκάτας τῶν προσγινομένων ἁπάντων, *the Tenth of all Profits* to the Gods they worshipped, *viz. Jupiter, Apollo,* and the *Cabiri* (*u*). *Camillus* paid the Tenth of his Spoils to *Apollo*, as both *Livy* and *Plutarch* report. *Tarquinius Priscus* (which Mr. *S.* omits) upon the taking of *Suessa*, paid a Tithe to the Gods of at least 4co Talents of Silver (*w*), where we see it was paid to the Gods in general. As also the Tithe of Spoils, whith *Posthumius* the Dictator spent on Sacrifices and Prayers to the honour of the Gods, and in building a Temple to *Ceres, Bacchus*, and *Proserpina* (*x*); the same Author also notes that *M. Coriolanus* did not distribute his Spoils to the Souldiers,, till he had first deducted that which was Sacred to the Gods: So likewise *M. Horatius*, after his Victory over the *Sabines*, first separated whatsoever he was to consecrate to the Gods (*y*), and though it be not always recorded, yet we may conclude this was always done, *For it was* (saith *Servius*) *a* Roman *Custom when they made War, to promise some of the Spoils to the Gods, and therefore there was a Temple at* Rome *dedicated* Jovi prædatori, *not that presided over the Spoils, but because some of the prey was due to him* (*z*). Nor need we doubt whether the Tenth was the proportion, having so many expres testimonies of that part, and not one by name of any other part. And as the Souldiers had their Deities, so had Travellers and Tradesmen also their proper Gods to whom they paid yearly Tithes, as appears by that Inscription in *Scaliger*, mentioning *Cæsius* a Merchants Tithes yearly vowed to *Fortune, Apollo*, and the Deities of the way (*a*), and also by the Feasts made to *Orestes, to whom those Feasts lately made on the account of Tithes were a great honour*, saith *Cicero* (*b*). All which put together, shews that among the *Romans*, Rich and Poor, Souldiers, Merchants, Travellers, and all sorts of Men did constantly pay their Tithes to some Gods

or

(*t*) *Dionis. Halicarn.* l. 1.

(*u*) Idem ibid.

(*w*) Idem l. 4.

(*x*) Idem l. 6.

(*y*) Idem Fragment. l. 11.

(*z*) *Serv.* in Æn. 3. com. 21. —*Divos ipsumque vocamus In prædam partemq; Jovem--*

(*a*) *Seld.* hist. pag. 28.

(*b*) *Cicer.* offic. l. 2.

or other, which fully juſtifies the former Teſtimony of *P. Diaconus*.

§. III. But Mr. *S.* objects, *Firſt*, this Tithing was not yearly, *p.*25. and only ſometimes, *p.*28. To which I anſwer, we have proved it was yearly among the *Phœnicians* and *Græcians*, whence the *Romans* learned it, and the Inſcription of *Cæſius* Tithes, *pag.*28. begins, *Omnibus hic annis, votorum more ſuorum*: which plainly ſhews a yearly cuſtom; to which we may add, that the great plenty of theſe Tithes ſhews they were paid yearly, nor can it be made out how ſo many Prieſts belonging to ſo many Gods as the *Romans* had, could live in ſuch great abundance out of offerings, generally made in the proportion of a Tenth, if Tithes were not yearly paid. *Tertullian* tells us, what prodigal Feaſts the *Salii* (a ſort of *Roman* Prieſts) were wont to make (*c*), and it was not arbitrary Conſecrations would ſupport that expence; 'tis true, the Spoils and extraordinary gains could only be tithed when they happened, but what renewed yearly it is likely was yearly paid. *Secondly*, Mr. *S.* pretends that the *Romans* Tithes were given by ſpecial Vow, and therefore not yearly, nor as a due: But his own Inſtance (juſt now repeated) of *Cæſius* ſhews, *that Vows were renewed every year*; ſo *Aulus Poſthumius Vowed Sacrifices every year* (*d*). The Vow for the Emperours ſafety was made anew every year, and thence *Pliny* wiſhes he may every year vow for it, and yearly pay that Vow (*e*), and *Tertullian* calls it, *Annua votorum nuncupatio*; and ſuch were the *Votivæ noctes* in *Iſis*, her annual Feſtival (*f*): ſo that we ſee the *Gentiles* often Vowed things that were antecedent duties, and did yearly renew thoſe Vows; yet withal obſerve that the dedications by Vow are chiefly of extraordinary Tithes, as of Spoils of War, or the like; but we ſee by the words *debetur, oportet, &c.* that even when they Vowed them, they did firſt believe them due to the Gods. *Thirdly*, He objects Tithes were paid but of ſome things only, *viz.* of extraordinary gains. To which I Anſwer, There are words ſo general, and ſo many particulars

(*c*) *Tertul.* Apol. cap. 39.

(*d*) *Dion. Halicarn.* l. 6.

(*e*) *Plin.* ad *Trajan.*

(*f*) *Propert.* l. 2. & 8.

culars recited in the forementioned Inſtances, as well of *Greeks* as *Romans*, as do utterly confute that limitation of Mr. *S.* his own deviſing, we have ſeen expreſs Teſtimony of the *Romans* paying Tithes *of their whole Eſtate*; of the *Lydians* in *Suidas*, *giving Tithes of all*; of the *Carthaginians*, *ſending Tithe of all their profits to Tyre.* We have had particular inſtances of Tithes, *of Tithes of Fruits*, which *Reccaranus* taught the men of *Italy* to offer to the Gods; of *Tithes of Corn* dedicated to *Apollo* at *Delos*: the *Pelaſgians* Tithe of all that ſhould increaſe, as alſo Tithe of *Mines* paid yearly, and Tithes of *Merchandize* both among *Greeks* and *Romans*; Tithes of *Frankincenſe* and *Cinnamon* among the *Arabians* and *Ethiopians*, which ſufficiently prove Tithe was paid of all ordinary profits; and if either Tithes were paid of as many kinds as Firſt-fruits were, or if Firſt-fruits (as Mr. *S.* ſaith, *pag.*30.) were paid in the proportion of a Tenth, ſo that the words be uſed promiſcuouſly, then we have ſtill clearer proof, for *Porphiry* names Firſt-fruits of *Wheat*, *Barly*, *Wine*, *Hony*, *Oil*, and all other things (*g*). *Maximus Tyrius* mentions the Husbandmans Firſt-fruits *of Corn offered to the Gods that gave them* (*h*); *Pliny* alſo (who calls the Tithes ſent to *Delphos* Firſt fruits *i*) ſaith, the *Romans* never taſted their new Fruits or Wines till the Prieſts had taken the Firſt-fruits of them (*k*); and *Feſtus* in the word *Pollucere* (which *Scaliger* ſaith, ſignifies the paying *Hercules* Tithes, and offering Firſt-fruits to the Gods (*l*), reckons among the Firſt-fruits offered to the Gods *Bread-Corn*, *Pulſe*, *Wine*, *Leavend bread*, *preſſed Figs*, *Pork*, *Beef*, *Lamb*, *Cheeſe*, *Mutton*, *Frumenty*, *Indian Corn*, *Oil*, *and divers ſorts of Fiſh*; and to *Hercules* (ſaith he) all that was for meat and drink they did *Pollucere*; that is (according to *Scaliger*) pay Tithes out of (*m*); we conclude therefore they paid Tithes of all, even of ordinary gains. *Laſtly*, Mr. *S.* objects, *Tithes were paid to ſome Gods only*: But I reply, It is no matter what Gods they paid to, ſince they alwaies paid it to ſome or other; they had ſo many Gods, that one Man could not pay to all, wherefore they choſe one or more Deities, as their fancy, circumſtances, or the

(*g*) *Porph.* de abſtin. l. 2. §. 6, & 7.

(*h*) *Max. Tyr.* diſſert. 14. p. 142.

(*i*) *Plin.* nat. hiſt. l. 4. c. 12.

(*k*) Idem l. 18. c. 2. p. 367.

(*l*) *Scaliger* caſtigat. in Feſtum, p. 137.

(*m*) Feſtus verb. *Pollucto*, p. 168.

cuſtom

cuſtom of the place directed, and to them they paid Tithes, though we ſee ſometimes they were paid to the Gods in general, to whom they believed the Tenth part to be due. Having thus fully ſhewed the Heathens uſe of Tithing, before I conclude, let me here produce ſome reaſons to prove, that this Cuſtom was derived from ſome of the firſt Patriarchs, and not from the *Jews*. Firſt, The Antiquity and extent of Tithes among them, which was a Law in *Greece*, almoſt as ſoon as *Moſes* made it ſo to the *Jews*, and ſpread it ſelf over *Europe*, *Aſia*, and *Africa*, yea even to the barbarous Northern Nations, who had no knowledge of the *Jews* (*n*); and wherever the *Gentiles* paid them, they did it only in One Tenth part, as the Patriachs did of old, and the Chriſtians do now, not with any of the Ceremonial appendages. Secondly, The *Gentiles* alſo gene rally paid Tithe of Spoils, which the *Jews* never did, and that ſhews their practice was derived from *Abraham* and *Melchiſedec*, not from the Law of *Moſes*, which will ſtill be plainer if we note (what is not commonly obſerved, *viz.*) Thirdly, The *Gentiles* often paid Tithes to their Kings or Chief Magiſtrate, a cuſtom that is plainly derived from *Melchiſedec*, who was (as all Kings of old were) both King and Prieſt, and while the Profeſſions were united in one perſon he had Tithes, but when the Profeſſions were ſeparated, the King in ſome places irregularly took them to himſelf. So it was in *Italy* till *Evanders* time, when *Reccaranus* took them off from giving Tithes to the King, and bid them give them to the Gods. Thus alſo Tithes had been paid to the chief Magiſtrate at *Athens* before *Piſiſtratus* time, as his Letter to *Solon* ſhews; and *Demoſthenes* remembers that the State had Tithe of all Wares which paſſed the *Helleſpont*. *Xenophon* alſo mentions a like Tribute of a *Tenth* impoſed on the Ships trading in *Pontus* (*o*), and by an old Law at *Babylon*, the Prince had a Tenth of all that was imported into the City (*p*). The *Indians* had a peculiar Officer, who took the Tithe of all things ſold for the King (*q*). In the Iſlands of the *Arabian* Sea, the King had Tithe of all Fruits (*r*). *The ancient* Romans *gave the*

(*n*) *Seld.* hiſt. cap. 10. §. 14 p. 269.

(*o*) *Xenoph.* hiſt. Græc. l 1. 335.
(*p*) *Ariſtot.* Oeconom. l. 2. c. 2.
(*q*) *Strabo*, l. 15. p. 485.
(*r*) *Diodor. Sic.* l. 5. p. 220.

Tenth of their fields, and of the ſeed of their Tillage for Tribute (s), which he had out of *Appian*, who ſaith, *the Tithe of Seeds is given inſtead* (not of Rent, as Mr. *S.* miſtakes, but) *of Tribute* (t); *and this was that Tithe of Wine and ſmall Fruits, which the Senate permitted* L. Octavius *and* Cotta, *being Conſuls to ſell* (u), and hence the *Greeks* uſed Δεκατεύειν for πελωνεῖν, *to Tithe* for *to pay Tribute*; and the *Romans* called the Publicans *Decumanos Principes*, or *the Tithe-gatherers* (w). Sometimes on extraordinary occaſions the *Triumviri* exacted the Tenth of every Mans Eſtate (x), and by the *Papian* Law the Tithe of Inheritances was ſometimes paid to the State. All which are evident manifeſtations that Tithes came to be uſed among the *Gentiles* from the practice of *Abraham* and thoſe old Patriarchs, who (as we have ſhewed before) had this from God himſelf. And yet withal 'tis plain that this proportion of a Tenth part of all profits for the uſe of the Gods was very agreeable to the reaſon of Mankind. Since this Tradition was ſpread ſo far, embraced ſo univerſally, and rooted ſo deeply, this very thing hath made ſome take it for a Law of Nature, becauſe *in every thing, the conſent of all People is to be taken for a Natural Law* (y). *And 'tis an argument that is certainly right, which appears ſo to all* (z). However it muſt be granted, that whoever reproaches or condemns this proportion, he arraigns the wiſdom of all Mankind, and it is both infamous and impious for any Chriſtian to give leſs to the Prieſts than the Heathens did, or to think that part too much which they thought was too little, and therefore added many voluntary Oblations beſides; and it is now made evident that if we neglect to pay Tithes, we are ſo far from exceeding the righteouſneſs of the *Scribes* and *Phariſees*, that we fall ſhort of the righteouſneſs of the *Heathens*, who were never obliged by *Moſes* Law, and yet eſteemed themſelves bound to pay Tithes, which were firſt inſtituted by God, and then propagated by tradition to all the World, where it was ſo generally obſerved when Chriſt came, that there ſeems to be no need of any expreſs Law in the Goſpel for the proportion, becauſe *Jews* and *Gentiles* both

(s) *Alex.* ab *Alexandro* genial Dier. l. 4. c. 10.
(t) *Appian*: l. 1.
(u) *Cicero* in Verrem, orat. 5.
(w) Idem ibid.
(x) *Xiphilin.* pag. 170.
(y) *Cicero Tuſc.* queſt. l. 1.
(z) *Seneca*, Ep. 117.

both agreed in that already, and both believed that God had a right to that proportion.

CHAP. IV.

Of Tithes under the Goſpel;

From the coming of Chriſt till the year 400.

§. I. THough Mr. *S.* hath wholly omitted all that is ſaid in the New Teſtament that may have reſpect to Tithes, yet becauſe great light may be had from thence as to the grounds upon which the Primitive Chriſtians paid Tithes, we ſhall account it no digreſſion to examine into the Senſe of Chriſt and his Apoſtles in this matter. Leaving Mr. *S.* therefore for a while, we obſerve that when the Ceremonial Law ceaſed, the Prieſthood (as S. *Paul* informs us) was not ended, but changed (*a*) for a better; the Bleſſed Jeſus inſtituted his Apoſtles Miniſters of the New Teſtament, and gave them power and directions to conſtitute others to ſucceed them to the end of the World: And ſince this Miniſtry was to be managed by Men who would need a Maintenance, we cannot doubt but our Lord would provide for them; which alſo the greateſt Enemies of Tithes grant, and confeſs that Chriſt hath in the Goſpel eſtabliſhed a Maintenance in general for this Miniſtry, ſo that a competency for their ſubſiſtence is due to them *Jure Divino*. The only Queſtion is, Whether the old Proportion of a Tenth be now due to the Goſpel Miniſtry by the Law of God? We think it is, and that for theſe Reaſons.

(*a*) Hebrews vii. 12.

First,

Firſt, Becauſe there is no expreſs repeal of Tithes in the New Teſtament, and they were due by Gods Law before, therefore they muſt continue to be due ſo ſtill, unleſs ſome evident repeal can be produced. And there is more reaſon to expect an expreſs repeal of this Tenth part by name than by any other thing, becauſe that proportion was fixed ſo early and had ſtood ſo long; it began by Divine direction, continued by Gods approbation and poſitive Command, it was conſented to and practiced all the World over, ſo that the Bleſſed Jeſus might expect that both *Jews* and *Gentiles*, upon their converſion, would certainly give this old, known, and cuſtomary Proportion to the Goſpel Miniſtry, unleſs he forbid it in expreſs terms, which he would certainly have done if he intended Tithes ſhould have ceaſed. Though all that was Ceremonial be ceaſed, yet who could think that a bare Number, that is no type of any thing to come, that was in uſe before the Ceremonial Law, and a proportion paid to that very Prieſthood of which Chriſt was, that this number ſhould be either Ceremonial or ceaſed. There is an expreſs repeal of all Ceremonial things done by the Patriarchs, bloody Sacrifices and Circumciſion are abrogated by name in the Goſpel, but ſo are not Tithes, and therefore they are not Ceremonial. 'Tis true, all *Levitical* Ceremonies are not repealed by name, but divers are, and the reſt are ſuch as were ſo appropriate to the Temple and *Jewiſh* Prieſthood, that the deſtruction of the Temple and changing that Prieſthood rendred them unpracticable, and made them ceaſe of themſelves; but paying of a Tenth to the Miniſtry is as practicable now as ever. The Ceremonial appendages indeed appropriate to that Prieſthood and Worſhip ceaſed with them without any repeal; but the more ancient and Univerſal proportion of a Tenth that had ſuited *Melchiſedecs* Prieſthood as well as *Aarons*, and was needed and deſerved by the Goſpel Miniſters now, this could not ceaſe without an expreſs repeal, and ſince there is no repeal expreſs, we may conclude Chriſt intended it ſhould ſtand. We Chriſtians are ſure God directed and approved it before

fore the Law, and enjoyned it under the Law; we know he once liked this part, and therefore unleſs we have as plain proof he doth not like it now, we ought to give this Part ſtill, nothing but an expreſs repeal being ſufficient to aſſure us that God hath changed his mind in this particular. But though there be ſuch reaſon to expect a poſitive Text to repeal this Tenth part, the oppoſers of Evangelical Tithes can produce nothing but that place of S. *Paul*, *Hebr.* vii. 12. *For the Prieſthood being changed, there is made of neceſſity a change alſo of the Law*; and this they would have (againſt all ſenſe and reaſon) to imply a change of the Law for paying Tithes. But the ſcope of the Apoſtles diſcourſe in that Chapter, and the Contexts alſo do utterly confute that forced and falſe Interpretation: for the Apoſtle is there ſhewing, that Tithes belonged to *Melchiſedecs* Prieſthood, of which Order Chriſt himſelf is; yea, he proves *Melchiſedec* was a Prieſt by his receiving Tithes, and his Order better than *Aarons*, becauſe his Tithing was more excellent. Now ſince all this tends to prove Chriſts Prieſthood better than *Aarons*, would it not be very ſtrange if in that very Chapter S. *Paul* ſhould ſay, the Goſpel Prieſthood had no Tithes at all, might not the *Jews* have told him that he (who before argued *Melchiſedecs* Order to be better than *Aarons* from the Tithing annexed) now proved this new Prieſthood either not to be of *Melchiſedecs* Order, or not to be ſo good as that of *Aaron*, being wholly ſtript of Tithes; but if we look at the Verſes before and after, we ſhall ſee S. *Paul* is not ſpeaking of any change of the *Levitical* Law in the point of Tithes, but in the point of Succeſſion; he only ſpeaks here of the repeal of that branch of the Law which confined the Prieſthood to the Tribe of *Levi*. He had ſhewed, that God intended to change the Prieſthood for a better, and had ſpoken in the *Pſalms* of another Prieſt to ariſe after the Order of *Melchiſedec*, which Prieſt S. *Paul* affirms was the Bleſſed Jeſus, who indeed was not of *Aarons* Order, nor deſcended of that Tribe; but that was no hindrance to his being a Prieſt to this new Order, in regard it was plain God intended

tended to abrogate that old Order of confining the Priesthood to the Tribe of *Levi*, ver. 11. *For if that Levitical Priesthood had been perfect, and to endure for ever, why should not David have spoken of a new Priest of the Order of Aaron? why doth he say, he shall be of the Order of Melchisedec? (whose descent is not reckoned as the Levitical Priests were.) This shews the Priesthood was not to be confined to the Tribe of Levi any longer; and though the Law of Moses had so appointed, yet Gods choosing a New Priest of another Order, shews that branch of the Law is abrogated,* (and then comes in these words) *For there being a change of the Priesthood, there is made of necessity a change also of the Law,* ver. 12. that is, in the point of fixing the Priesthood to one Family, *ver.* 13. *For he of whom these things are spoken* (that is, Christ Jesus) *pertaineth to another Tribe of which no Man gave attendance at the Altar.* Ver. 14. *For it is evident our Lord sprang out of Juda, of which Tribe Moses spake nothing concerning the Priesthood.* This being the plain words and sense of the Apostle, I appeal to any man that will impartially consider the place, if it be not impudently done to force this Text (which speaks of quite another matter) to come in as a repeal of Tithes,; if it were (as some have unwarily expounded it) a repeal of the *Levitical* Law in general, it could only be extended to what was Ceremonial in the *Jewish* Tithing, but could not at all have touched the ancient Tenth part which had nothing Ceremonial in it. We conclude therefore, that since there is no expres repeal of Tithes in the New Testament, it follows that Christ intended they should stand and remain still due by Divine right, as they had always been reputed before.

Secondly, Besides this Negative Argument there are many probable and positive evidences, that it is our Saviours will Tithes should be paid to Gospel Ministers. Those which make it probable are: First, That when Christ is comparing Moral Duties and Tithes together, he saith, *These things ought ye to have done, and not to leave the other undone* (*b*), implying that those great Moral duties are so to be taken care of, that we do not omit to give Tithes,

(*b*) *Math.* xxiii. 23.

which

which being contributed to the maintenance of Gods Service it is an act of Righteouſneſs and Piety to pay Tithes ſtrictly even of the leaſt matter; and ſince Chriſt ſaid the *Phariſees ought to do this act of Righteouſneſs*, no doubt we Chriſtians ought to do it alſo, becauſe our Righteouſneſs muſt exceed theirs; thus many of the Fathers argue (*c*). Secondly, Whereas S. *Paul* ſaith, *The Presbyters who labour in the Word and Doctrine, are worthy of double honour* (*d*). He clearly alludes to the Elder brothers portion, which was double (*e*). And whereas the Elder brothers were originally the Prieſts of every Family, and had beſides their own ſhare of the Inheritance, the Tithes of all their Brethrens parts annexed to their Primogeniture, which made their Portion to be double; thence we may infer, that the Goſpel Miniſters ſucceeding thoſe Elder brothers in their Office, ought to ſucceed them in the reward alſo, and are worthy of Tithes, as S. *Hierom* ſeems to have underſtood this place, becauſe he quotes it to prove that Goſpel Miniſters have a right to Tithes (*f*). Thirdly, The ſame Apoſtle requires the Clergy ſhould *be given to Hoſpitality* (*g*), which doth require a certain and a large Proportion to ſupport it, and yet the Miniſters are forbid by Scripture (*h*), and by the Canons of the Church alſo (*i*), to uſe any other Trade to get mony, and are enjoyned to give themſelves wholly to their Miniſtry, and to attend continually upon it (*k*), ſo that they have neither time nor means allowed to procure wherewithal to be hoſpitable, and yet God requires they ſhould be given to Hoſpitality; whence we may infer, that he who lays this injunction on them, hath at leaſt allowed them the old proportion of a *Tenth*, to enable them to do what he requires of them. Fourthly, The 7*th* Chapter to the *Hebrews* hath many intimations that Tithes do belong to Chriſts Prieſthood, and conſequently to thoſe that are his Repreſentatives on the Earth: for S. *Paul* there proves they belonged to the Prieſthood of *Melchiſedec*, v. 2. yea he proves him a Prieſt by this *Medium*, becauſe he received Tithes, and *ver.* 8. he uſes the phraſe of *them that receive Tithes*, for *them that are Prieſts*. He is ſhewing, *that*

(*c*) *Origen* in Numer. hom. 11. *Hilar.* Expoſ. in S. Math. p. 355. *Auguſt.* in Pſal. 146. *Agobardus* de diſp. rei Eccleſ. pag. 277.

(*d*) 1 Tim. iv. 17.

(*e*) *Deut.* xxi. 17.

(*f*) *Hieron.* com. in Mal. 3. Tom. 5. p. 642.

(*g*) 1 Tim. iii. 2.

(*h*) 2 Tim. iv. 4.

(*i*) Apoſtol. Can. vi. lxxxi, lxxiii. Concil. *Chalced.* Can. III, &c.

(*k*) 1 Tim iv. 15.

here men that die are Priests, but he expresseth it thus, *here men that die receive Tithes*; to intimate to us, that Tithes are inseparable from a Priesthood, and in that very Verse S. *Paul* saith, in *Abrahams* Tithing *he received them of whom it is witnessed that he liveth*, that is plainly Christ himself (of whom the *Psalms* witness that he liveth, because they say *he was a Priest for ever*,) He it was who received *Abrahams* Tithe; so that as *Levi* paid Tithes in *Abraham*, v. 9. so Christ received Tithes in and by his type *Melchisedec*. Wherefore since Christ himself, by virtue of his Priesthood did actually receive Tithes, no doubt his right to them is assigned to those who succeed him on Earth, that is, the Evangelical Ministry, whose right to Tithes Dr. *Reynolds* undertakes to prove from this very place (*l*). And truly no man can justly call these Patriarchal and Evangelical Tithes, *abolished Ceremonies*, or count them improper for the Gospel Ministers, since the Priesthood of *Melchisedec* and *Christ*, that were neither temporary nor ceremonial, had Tithes annexed to them. But not to insist largely on these probable proofs, we have Two plain Texts which prove, that Jesus Christ hath ordained Tithes shall stand: The first is that place which *Origen* brings in his Homily on *Numbers*, to prove that Tithes are still due to the Gospel Ministry, *viz.* 1 *Cor.* ix. 13, 14. where S. *Paul*, though he took no maintenance of the *Corinthians*, yet he largely proves his right to it, First, by divers parallel cases of a *Souldier*, *Vine-dresser*, a *Shepheard*, ver. 7. Secondly, By the Moral sense of that *Levitical* Priesthood, of not *muzling the Ox*, ver. 8, 9, 10. Thirdly, From the excellency of his work among them, which afforded them things far more worth than the biggest proportion of their worldly Estates, *ver.* 11. Fourthly, From the practice of other Teachers, who had taken maintenance of them as a due, *ver.* 12. But the chief Argument of all urged by S. *Paul* for his right, is the positive Ordinance of God the Father for the Old Testament, and of our Lord Jesus for the New, *ver.* 13, 14. *Do ye not know* (saith he) *that they which minister about holy things, live of the things of the Temple, and*

(*l*) *Reynolds* on Psal. cx. 4. pag. 474, &c.

and they that wait at the Altar are partakers with the Altar: EVEN SO HATH THE LORD ORDAINED that they which preach the Goſpel ſhould live of the Goſpel: Where we ſee he urges God's care of the old Prieſthood as a Pattern which Chriſt had imitated in the New. Then (by God's ordaining) the *Levites* or Miniſters of the Temple lived ἐκ τοῦ ἱεροῦ, of the Holy portion, or (as we read) of the things of the Temple, that is, of *Tithes*, and the Prieſts or Waiters on the Altar did ſhare with the Altar, and had their part of offerings made there: Even ſo hath Chriſt ordained in the New Teſtament, that his Miniſters ſhall live of the rewards given them for preaching the Goſpel (*m*), of that which belongs to Chriſt and his Prieſthood: The Apoſtle names not Tithes, that he might not offend the *Jewiſh* Prieſthood, but by a Trope he intimates that he meant the maintenance formerly due to the Law, but now annexed to the Goſpel, and that by Chriſts own Ordinance. The Bleſſed Jeſus took the old proviſion for a Pattern, and (ὅπου γὰρ διάταξις) ordained even ſuch a like maintenanance for his Miniſters; not the ſame in all points (for it differs in the Ceremonies ſuperadded to it in *Moſes* Law,) but very like it in the main, like it in the Authority commanding, the certainty, the proportion, &c. that is, a *Tenth part*; and if our Lord had left our maintenance precarious, arbitrary, and unſettled, ſo that the People might have given more or leſs, ſomething or nothing, as they pleaſed, how could it be ſaid he had ordained even ſuch a Maintenance as was under the Law, when there would have been no likeneſs at all between them, no more than is between fixt and unfixt, certain and uncertain, or between a good proviſion and a bad: and it will make the Apoſtles words to be no ſenſe, if we do not underſtand him of a likeneſs between the Evangelical and Legal maintenance. As God ordained a certain fixed liberal proviſion for the *Levitical* Prieſthood, even ſo hath Chriſt ordained, that his Miniſters ſhall live of whatever men will give them; 'tis plain there would be no conſequence in that Expoſition, wherefore we conclude, that Chriſt ordained a certain maintenance

(*m*) *Mede* Diatrib. on 1 Cor. 9. Tom. 1. 226.

nance for his Miniſters, and becauſe his Pattern was the *Levitical* Law, it muſt be a Tenth part at leaſt. And doubtleſs the Primitive Chriſtians did believe it was Chriſts Ordinance they ſhould dedicate Tithes, becauſe as ſoon and as often as they could they offered Tithes as the juſt reward of the Goſpel, and their practice is the beſt commentary on this figurative expreſſion; they knew the Tenth had always been reputed Gods part, and every where paid to his Miniſters, and hearing Chriſt had ordained a proviſion like to that under the Law for his Miniſters, they eaſily underſtood he meant it of Tithes, and accordingly dedicated them to be the Goſpel maintenance, and of this now do we Live according to Chriſts ſpecial Ordinance. But ſome will ask, *Where did Chriſt ordain this?* I reply, We have the Holy Ghoſts witneſs he did ordain it, and therefore though we could not tell where, yet it is ſure there was ſuch an Ordinance delivered by Chriſt, but whether it were ſome former Order of Chriſt conveyed to S. *Paul* by unwritten Tradition (as that *Acts* xx. 35.) or it was a ſpecial revelation to this Apoſtle now firſt written down, yet to us it is a Divine Law. And ſince Chriſt hath ordained we ſhall live upon a certain fixed liberal proportion, like unto that which the *Levitical* Prieſts had for the main, we conclude that this cannot be leſs than a Tenth; ſo much therefore is due to us by Chriſts own Ordinance, i.e. *Jure Divino.*

Secondly, The ſame Apoſtle hath another expreſs Law for Miniſters maintenance in theſe words, *Let him that is taught in the word, communicate unto him that teacheth in all good things* (*n*), or as *Beza* in his notes doth explain it, *Ex omnibus bonis ſuis, Let him give him a part of all his goods or good things*, for τὰ ἀγαθὰ both here and elſewhere ſignifies our *Worldly goods* (*o*), and κοινωνεῖν imports our *giving* of our goods to others, ſo as they may have a part and ſhare of them (*p*). The ſenſe of this part therefore is, That Chriſtians muſt not take and enjoy all their Worldly goods themſelves. A Part of them all, a ſhare of every kind of their Worldly goods muſt be ſet apart for their Miniſter, and freely communicated to him, ſo that he may partake with

(*n*) Gal. vi. 6.

(*o*) Luke xii. 19. & Chap. xvi. 25.

(*p*) Rom. xii. 13. Phil. iv. 15.

with us in all: So that by the letter of this Law, thoſe Chriſtians who have Corn, Hay, Wool, increaſe of Flocks and Herds, or any other Worldly goods, are bound to give the Miniſter a part of all theſe; and though the Tenth be not named to avoid giving of offence to the *Jews*, yet no queſtion that Part is meant, becauſe it was ſo well known, and ſo univerſally believed then by *Jews* and *Gentiles* to belong to God, and it was ſuperfluous to name it, when it would give offence ſo to do; ſince this ever was the Part and no other; this Part God had choſen and approved, and never ſhewed any diſlike of it, nor had he ſubſtituted any other in the room of it, this Part had good evidence of Gods liking; and therefore when Good men would give ſome part (and muſt fix upon a proportion before they could give) no doubt they would chooſe that part which they had moſt aſſurance would pleaſe God, and if ſo, they muſt give a Tenth part; and we ſhall ſee preſently, that when the Primitive Chriſtians came to limit the Apoſtles indefinite expreſſion by giving in a fixed proportion, *They did give Tithes.* That proportion was fixed and known, generally uſed all the World over, and had been from the beginning, before this Law of giving part of all our Goods to the Miniſters was made, and therefore that proportion was intended in this Law; and when this Precept was to be reduced to act, this Proportion was the limitation thereof. Only there is by this general expreſſion liberty left to give more (which includes a *Tenth*) but not to give leſs; and to encourage us rather to exceed than fall ſhort of this known proportion, S. *Paul* tells us in the two next Verſes, *ver.* 7. and 8. that to ſpend all our goods without giving the Prieſt his part, is to mock God, and provoke him to withhold all Goſpel bleſſings from us; and if we be ſo wicked as to ſpend all upon our ſelves in providing for the fleſh, all that we can expect is that we and our Eſtates ſhall periſh together, our fleſh, and the proviſion laid out upon it ſhall turn into corruption; but what we give to the Miniſters is ſowed to the Spirit, laid out for our Souls good, and for that we ſo beſtow we ſhall have everlaſting life.

life. Which are strong Arguments to engage us to give a large Part to our Ministers, because that part of our goods only is disposed of for the advantage of our Souls here and hereafter: this Precept therefore with the inference upon it is a clearer proof out of the New Testament, that God requires Christians to give at least a Tenth part of all their goods to his Ministers, to whom therefore this part is due *Jure divino.*

But that we may do right to those of the contrary Opinion, before we conclude this discourse we will mention their Main Objections, which are Three. *First*, They say, *Neither Christ nor his Apostles received Tithes.* To which I Answer, That our Lord Jesus was *made under the Law*, Gal. iv. 4. and was always obedient to it, since it was in full force during his life. Now the Law had then fixed Tithes upon the Tribe of *Levi*, to which Tribe our Saviour did not belong, and therefore he had broken the Law if he had claimed or received Tithes then; yet we have proved out of S. *Paul*, that Tithes did belong to his Priesthood, though the time in which he lived would not permit him to exercise that right. As for the Apostls, their unfixed state of life was such, that neither could Believers pay them regularly, nor they receive them; and besides they were very tender of giving offence to the *Jewish* Priesthood who yet were in possession of them, nor had they any need to anger the *Levites* by claiming or receiving them, since they were plentifully provided for other ways, by some Christians selling all, and giving them the Mony to dispose of, and by the liberal Contributions that others made to them. Yet we see they did declare, they had by Christs Ordinance a right to such a kind of maintenance as the *Levites* of old had by Gods Law, and that Believers ought to give the Ministers a part of all their goods; but as it was no prejudice to the *Levites* title, that no Tithes were paid in the Wilderness to *Aaron* or the rest of that Ministry: so it is no prejudice to our Claim, that Christ and his Apostles in the unsettled state of the Church took no Tithe.

Secondly, They object, *That Christ hath expresly set down*

Meat

Meat and Drink for the maintenance of his Miniſters (*q*), *and therefore did not intend they ſhould have Tithes.* I reply, If Meat and Drink comprehend all neceſſary conveniences of humane life ſuitable to a Miniſters office, then Tithe may well ſtand, becauſe that proportion where it is paid ſeldom affords more. But indeed theſe Texts are groſly miſtaken, for they are ſpecial directions given by Chriſt only with reſpect to that particular Embaſſy on which he was then ſending his Diſciples, not general or ſtanding Laws for the Church afterwards; *Theſe Commands* (ſaith S. *Chryſoſtom*) *were temporary, and not to continue always* (*r*), which appears in that Shoes are forbidden here, and upper Garments,&c. which yet we ſee theſe Apoſtles uſed without ſcruple afterward (*s*); and if theſe Commands were ſtill in force, no Miniſter might have any Mony in his purſe, or two Cotes on his back, Shoes on his feet, or a Staff in his hand: but indeed theſe Precepts are now void, and were as ſoon as that meſſage was over; and therefore the Apoſtles took more than bare meat and drink, which they would not have done againſt their Maſters poſitive Command, if it had not been out of date. Meat and Drink was all they were to take of unconverted perſons in this firſt Meſſage; but *we muſt not think* (ſaith *Calvin*) *there is a ſtanding Law preſcribed to all Miniſters, while the Lord is commanding the firſt Preachers of his Doctrine what they were to do for a while, which piece of Ignorance hath ſo far deceived many, that they would reduce all Miniſters without diſtinction to this Rule* (*t*). *Thirdly*, Their great Objection is, *That the name of Tithes is not found in any command of the New Teſtament.* To which I reply, That the Articles of our Church ſay, *We are to receive, not only whatever is read in Scripture, but what may be proved thereby* (*u*); and when the *Arrians* objected to the Orthodox Fathers, that the word, Ὁμοούσιος, was not found in Scripture, and upon that pretence denied Chriſt to be of the ſame ſubſtance with his Father; The Orthodox anſwered the ſenſe of that word was in Scripture, and might be proved by fair conſequences, and therefore the thing was to be believed, though the word was

(*q*) Math. x. 9. & Luke x. 6, 7, 8, 9.

(*r*) *Chryſoſt.* hom. Tom. 6. pag. 896.

(*s*) Acts xii. 8. & 2 Tim. iv. 13.

(*t*) *Calvin.* Harm. Evang. in loc. p. 218.

(*u*) Art. xxxix. art. 6.

was not there; and we say the very same concerning Tithes. And further, we can give good reasons why Tithes were not named in the New Testament, though Christ intended they should stand: *First*, To avoid giving offence to the *Jews*, and take from them all occasion of traducing this new Religion, as if the design of it was only to spoil their Priests of their Temporalties. The Apostles were always tender towards the *Jews*, and lest they should hinder their Conversion, they complied so far as to observe some aboliſhed Ceremonies (*w*); and 'tis thought S. *Paul* conceals his name in the Epistle to the *Hebrews*, because he was there to prove the Legal Priesthood and Sacrifices were aboliſhed. And this reason alone might cause the Writers of the New Testament to forbear the name of *Tithes* as due to Gospel Ministers, lest they should exasperate the *Jewish* Priesthood, which then was in actual possession of them. *Secondly*, It was needless to name *Tithes* in the New Testament, because they stood firm enough upon their old foundation, Gods directing this part before the Law, his enjoyning it in the Law, and never repealing it, this with the practice of the Patriarchs, the *Jews* and *Gentiles* in all Nations (where the Gospel was to be preached) for above 2000 years, had settled it so well before, that it needed no new establishment, some general intimations, that the Apostles were Gods Ministers, and were to have that part which belonged to God, that part of all our Goods was to be given to them, and that Christ had ordained them a maintenance suitable to that of the *Levitical* Priesthood, was enough to make all Nations understand that the Tenth was now to be given to Gospel Ministers, and they did actually give it upon these general directions, which they took for express Laws to give Tithes. And thus it was also in the parallel case of the Sabbath, which is a Seventh part of our time dedicated to God, as Tithes are a Tenth of our Estates. All sober Christians do generally believe Christ intended this Seventh part of our time should remain still dedicated to God, as to the main; yet there is no express Law for it in the New Testament, because

(*w*) Act. xvi. 3. Chap. xxi. 14. Galat. II. 11, 12, 13.

cause it was well settled before, by Gods Law and a long practice upon it. There were indeed some Ceremonies superadded under *Moses* (as also there were in Tithes) to be pared off; but the proportion, the certainty, and end of keeping it were to remain, because the reason of the thing continued, *viz.* that God was still to be worshipped at one certain time in publick, and God had never declared any dislike of the proportion chosen of old; and therefore this stands still, and no doubt by Christ's will and intention, though he made no new Law expresly for it: And so also doth the payment of Tithes, which with the Sabbath being well settled before, our Lord did not think it necessary to make any New expres Law for either of them. *Thirdly*, The naming *Tithes* might be forborn in the New Testament, because the Christians of that Age could not possibly pay them, nor yet the Apostles receive them, so that there was no occasion to name them then, and Jesus foresaw that enough was said to move Christians to pay them as soon as the Church was settled, which was as soon as there was need of them; and therefore though he intended Tithes should stand in force, yet he might justly forbear expres mention of them. *Lastly*, It was not necessary to name *Tithes* in the New Testament, because Believers did freely give more than a Tenth to God and his Ministers; *Many of them then sold all that they had, and gave the price to the Apostles* (*x*). And the Records of the first Ages shew that their bounty was very great, insomuch that the Clergy was maintained nobly, and envied by many for their abundance, as both Heathen and Christian Authors shew (*y*); so that as Mr. *S.* speaks, *It had been to little purpose to have had Tithes of annual increase paid* (or named, say I) *while that most bountiful devotion of good Christians continued in frequent oblations both of Lands and Goods to such value.* Seld. *Review*, p. 462. To enjoyn a Tenth then had been to check the liberality of those pious Ages, and was as needless, as it is to enjoyn him to keep the Sabbath, who spends every day wholly in Devotion. The Tenth was then esteemed but the least and lowest measure of Christian

(*x*) Act. iv, & v.

(*y*) *Ammian. Marcellin.* & S. *Chrysostom*, ap. *Seld.* review pag. 462.

Oblations, a pitch to which the *Jews* arrived; but that Age thought Christians, who had a better Priesthood, better Ordinances, and better Promises, were obliged to give more, and actually did so, so that to command the Tenth expresly was needless, since Jesus foresaw his Devout Proselytes would give more. And this may suffice to shew, why Christ did not enjoyn *Tithes* by name in the New Testament, although there be sufficient evidence that he ordained that Proportion should stand, which therefore was believed by the Primitive Christians to be due to Gospel Ministers *Jure Divino*, as we shall go on to demonstrate.

§. II. If the Inferences from the forecited Texts seem not so clear to any, the Opinion and Practice of the Primitive Church may satisfie them that we have rightly expounded them; for those Ancients who lived so near the Apostles, and had conversed with such as had seen them alive, having also many of their Traditions as yet remaining uncorrupted among them, are most likely to know what their Meaning was in this case. Wherefore we will now enquire into their Judgment and Practice concerning Tithes, and that we may follow Mr. *S.* more closely, we shall observe his division of the Time since our Saviour into Four times four hundred years, only where he hath taken off any Testimony from the preceding four hundred years and added it to the next following (as he often doth, to make the Evidence seem less and later than it is) there we shall put them in their true place, and particularly we must reduce the Testimonies of S. *Ambrose*, S. *Hierom*, and S. *Augustine*, (which he throws back into the next Chapter) to this first four hundred years, in which Mr. *S.* had no mind to have them seen, because he had laid down these false Positions in the entrance to this Chapter, *viz.* *That no use of Tithes occurs till about the end of this* 400 *years* (*a*). As also, *That there are no Constitutions or Opinion of this time that are of credit* (*b*). To confute which false Assertions let us first enquire into the Practice, and then into the Opinion of this Age. *First*, As to the Practice of the

(*a*) *Seld.* hist. Chap. 4. p. 35.
(*b*) Idem ibid.

the Church, it is not to be expected there ſhould be any regular payment of Tithes till toward the end of this Period, becauſe the Church was under Perſecution for nigh 320 of this 400 years, and yet even under the Perſecution the Chriſtians did give their Clergy more than a Tenth part, which Mr. *S.* himſelf confeſſes, ſaying, *So liberal in the beginning of Chriſtianity was the Devotion of the Believers, that their bounty to the Evangelical Prieſthood far exceeded what the Tenth could have been* (*c*); and again, —— *in reſpect thereof Tenths were a ſmall part* (*d*). So that as he truly ſays, *It had been little to the purpoſe to have had Tithes of annual increaſe paid, while that moſt bountiful Devotion of good Chriſtians continued* (*e*); that is, as he there grants till the Ninth Perſecution, *Anno* 260. yea until the time of Pope *Damaſus* and S. *Chryſoſtom* (*f*), which is even to the end of this 400 years: from whence we infer, that if the Chriſtians then gave more than a Tenth part, the Tenth was included in that larger proportion, for *Omne majus continet in ſe minus*: nor can it properly be ſaid they did not offer the Tenth, ſince they offered that and more, believing the bare Tithe (which niggardly Chriſtians in name only, now think too much) was too little for the Evangelical Prieſthood; wherefore they judged a Tenth at leaſt to be due to Miniſters, and that by Gods Law. At firſt we read they ſold their Poſſeſſions and gave the price of them to the Apoſtles, and had all things common (*g*); which Cuſtom did ſpread further than *Jeruſalem*, and continue longer than Mr. *S.* is willing to allow, for *Juſtin Martyr* tells us, that in his time (*An.*160.) *Chriſtians brought what they had into a Common ſtock, and diſtributed it to every one that had need* (*h*); and *Irenæus* ſaith, *That Believers conſecrated all they had to the Lords uſe* (*i*). *Among us* (ſaith *Tertullian*) *all things are common, but our wives* (*k*); yet the ſame *Tertullian* mentions *Monthly offerings*, and *Juſtin Martyr*, *Weekly contributions*, which were made out of the profits of their hand labours, who had given all their Real eſtate to God before. Upon which ground we may affirm, that even where Chriſtians had ſold all their Patrimonies and

(*c*) Hiſt. *Tithes*, c. 4. p. 36.
(*d*) Idem, p. 39.
(*e*) Review of Chap. 4. p. 462.
(*f*) Hiſt. Chap. 4. p. 40.
(*g*) Acts iv. 34.
(*h*) Νῦν καὶ ἃ ἔχομεν εἰς κοινὸν φέροντες καὶ παντὶ δεομένῳ κοινωνοῦντες. Apol. 2. p. 61.
(*i*) *Iræn.* adv. hæreſ. l. 4. c. 34. An. 180.
(*k*) *Tertul.* Apol. c. 39. An. 200.

put them into a Common ſtock, yet even there frequent and voluntary Oblations were made as God did proſper them in th eir labours, ſo that there might be Community at *Antioch*, notwithſtanding their ſending Alms to *Judea*, as alſo in *Galatia* and *Corinth*, though S. *Paul* do order Weekly collections there, 1 *Cor.* xvi. 1. But however this is certain, that the Church was plentifully provided for both by Donations of whole Eſtates, and by Weekly or Monthly contributions, ſo that it had been ridiculous to enjoyn them by Canons to give a Tenth, who freely gave more, and thought all they had too little for God. As for the Diſtribution of theſe offerings, the Biſhop ordered it, and thoſe *Oeconomi* Mr. *S.* mentions (*l*) were Officers, not only under the Biſhop (as he grants) (*m*), but choſen by him (*n*), and were to give up their accounts to him (*o*), for he was the common Treaſurer of the Church. And he it was who ordered thoſe Monthly Diſtributions (*p*) unto the Inferiour Clergy, whom *Cyprian* calls *Fratres ſportulantes*; where by the way we may note the groſs and ſhameful overſight of Mr. *S.* who (as if he had never ſeen *Cyprians* works) ſaith, *He calls the Brethren that caſt in their Monthly offerings, Fratres ſportulantes*; whereas it is clear as the Sun, that *Cyprian* calls not the Givers, but the Receivers by that name; it is the Clergy that he ſaith remained *In honore ſportulantium fratrum* (*q*), and elſewhere he tells us, He intended to ordain *Aurelius* and *Cæleſtinus* Presbyters, *ut & ſportulis iiſdem cum Presbyteris honorentur* (*r*). 'Tis true *Sportulæ* was uſed in later-times for the Oblations given to maintain the Miniſtry; but the word is not ſo uſed in either of thoſe two places cited by Mr. *S.* (*s*), for there it ſignifies a *Bribe*, and is taken in an evil ſenſe, which ſhews he cites places without conſulting them: but if any would ſee where the word is uſed for *Free gifts* and *Honourable allowances*, he may conſult *Budæus* (*t*). As for the ſenſe of S. *Cyprian*; where he ſaith, *The Levites by Gods Ordinance were ſo provided for, as never to be hindred by Secular affairs from attending on their Miniſtry, which method and form is now obſerved in the Clergy, ſo that they who are promoted in the Church to holy Orders*

(*l*) Hiſt. *Tithes*, p. 36, 37.
(*m*) Ibid. p. 81.
(*n*) *Cypr.* l. 2. ep. 8.
(*o*) *Iſidor. Peleuſ.* l. 2. ep. 127.
(*p*) *Cypr.* Epiſt. 84. edit. *Pamel.*
(*q*) *Cypr.* Ep. 66. edit. *Pam.* (not 266.)
(*r*) Id. Ep. 34.
(*s*) Concil. *Chalced.* ap. *Binium*, T. 2. p. 1. p. 266. Et idem *Bin.* T. 3. p. 1. ca. 25. p. 398.
(*t*) Lib. de *Aſſ.* fol. 144, 145.

Orders ſhould not be taken off from Divine adminiſtration, nor be intangled with ſecular things, but remaining in the honour of Sportulantes fratres, *receiving as it were Tithe of Fruits, might never be taken off from the Altar and Sacrifices,* Ep. 34. I cannot ſee how Mr. *S.* can conclude from hence, *That no payment of Tithes was in uſe in his time.* For if we conſider the place, it will appear he ſaith, the maintenance of the Goſpel Clergy was like to that of the *Levites*, only with this difference, that whereas the *Levites* had Tithe of Fruits from the People, the Clergy had their *Sportulæ* from the Biſhop, which was *Tanquam decimas ex fructibus*, in lieu of Tithes, and as it were Tithe of Fruits, which implies, that the Biſhops did then really receive *Decimas ex fructibus*, Oblations of Fruits in the proportion of a Tenth (as we ſhall ſhew more fully preſently) out of which they diſtributed a portion as large as Tithes would have been to the inferiour Clergy, which was *tanquam Decimas*. And unleſs Mr. *S.* could prove, that the oblations of Fruits made to the Biſhop was not in the proportion of a Tenth; he cannot infer from this place *There was no uſe of Tithes in* Cyprians *time.* It is plain that the proportion was ſo large as to maintain the Miniſtry liberally without minding Secular things, and that may convince us that the Oblations were a Tenth at leaſt; and S. *Cyprian* ſaith, it was proportionable to the *Levites* Tithe, only not paid to the inferiour Clergy by the People. Again, S. *Cyprian* commends the bounty of former times, when they ſold Houſes and Lands, and thence juſtly blames thoſe of his own time, *who did not ſo much as give Tithes out of their Patrimony (u)*; which ſhews he accounted it a fault and blame-worthy, not to give Tithes. But Mr. *S.* contrary to all Grammar and common Senſe, would have *Patrimonio decimas damus*, to ſignifie, *We give the Tenth part of our Land*, but then it muſt have been *Decimam partem Patrimonii*; and ſince the words are *Decimas Patrimonio*, nothing can be plainer than that he means *Tithes from*, or *out of our Eſtates*, and he blames thoſe who (contrary to the example of the firſt Chriſtians) not only retained their propriety in their Eſtate, but did not ſo much

(u) *Domos tunc & fundos venundabant, at nunc patrimonio nec decimas damus*, Cypr. de unit. Eccleſ. §. 23.

much as give Tithes out of it, which it seems was then expected from the most worldly sort of Christians. But *Cyprian* himself, and divers other of the devoutest Christians in that Age did really give Houses and Lands then (*w*), so that whatever Doubts Mr. *S.* raises (to maintain his false Assertions) it is plain that the Church then had Lands and Tithes also, in such manner as it was capable to receive them, considering the Persecutions. Nor is it any solid Proof there were no Tithes paid *An.* 380, because *Gratian*, *Valentinian* and *Theodosius* then made Laws for paying the Tenth of Mines and Quarries to the Exchequer (as Mr. *S.* objects) (*x*), for he grants Tithes were paid in *Italy* in the time of S. *Ambrose*, who was contemporary with these Emperours (*y*); yea the making a Law for paying this sort of extraordinary Tithes to the Exchequer implies, that the ordinary Tithes of Fruits were then given to the Church: for it is most certain the Church was so rich then as that it was envied at by some, as appears from what Mr. *S.* reports both concerning *Damasus* and S. *Chrysostom*, who both lived in the end of this 400 years (*z*). And though the things given to the Church were called *Offerings*, yet Mr. *S.* tells us, *the phrase then was to offer Tithes* (*a*); so that it is very likely those oblations were usually in the Proportion of a Tenth at least, and therefore the Church then had Tithes. And when *Constantine* made a Law, *That the Clergy of every City should out of the Tributes thereof have yearly measures of Corn given them, in a proportion suitable rather to his bounty than their need* (*b*). We need not question but the Emperour paid a Tithe at least, of that, out of which the People had made oblations before; and *Eusebius* tells us, that he set his Subjects a good Example, for *he gave plentiful Provisions out of his Estate to the Churches of God — and with many dedicated things he chearfully filled the venerable Treasuries* (*c*). Doubtless those pious and bountiful Emperours would have made express Civil Laws for payment of Tenths, if there had been any need; but there was no occasion since the Christians did all this time give Tenths, and more freely in obedience to the Law of God, which the Fathers

(*w*) Vit. *Cypr.* *Euseb.* lib. X. pag. 289. Concil. *Antioc.* Can. 24, 25.

(*x*) Hist. *Tithes*, Chap. 4. p. 39.

(*y*) Ibid. Ch. 5. p. 46.

(*z*) Hist. Ch. 4. p. 40.

(*a*) Ibid. Ch. 5. p. 46.

(*b*) *Theodorit.* l. 1. cap. 11.

(*c*) *Euseb.* vit. *Constant.* l. 1. c. 35. p. 321.

Fathers taught them required a Tenth part of their Profits at leaſt to be given to the Miniſtry, as we ſhall now make out.

§. III. *Secondly*, The Opinion of this 400 is very imperfectly related by Mr. *S.* who mentions none but *Origen* alone in all this Period, and ſtrives to weaken his Teſtimony alſo; but we ſhall both vindicate him and fill up all Mr. *S.* his omiſſions, and thereby clearly ſhew the opinion of this Age in point of Tithes. *Irenæus* (*who* (as S. *Baſil* ſaith)(*d*), *was very near the time of Apoſtles*) is our firſt Witneſs, and he affirms, *We ought to offer God the Firſt-fruits of his Creatures* (*e*); and that in the Proportion of a Tenth at leaſt, for he ſoon after adds, —— *the Jews for this cauſe had their Tenths conſecrated, but Chriſtians have dedicated all they have to Gods Service chearfully and freely, not giving that which is leſs than the Jews, becauſe they have a better hope.* So that it ſeems he believed none ought to give leſs than a Tenth to God, and that thoſe who would go to the higheſt point of duty, ought to dedicate all they had. Yea, he reckons Tithes to be a part of that Moral Law, which Chriſt came not to abrogate, but enlarge; for where he is ſpeaking of Chriſts heightning and inlarging things natural and common to all, his Examples are, that inſtead of *Thou ſhalt not commit adultery*, Chriſt ſays, *Thou ſhalt not luſt after any:* inſtead of *Thou ſhalt not kill, Thou ſhalt not be angry, inſtead of Thou ſhalt pay Tithes, ſell all and give to the Poor, which are not diſſolving of the Law, but enlarging it* (*f*). Wherefore he reckons Tithes a Moral Precept, not abrogated by Chriſt, but enlarged into a Command of giving more, which will ſtill include a Tenth part. Secondly, *Origen* is next, who hath other Teſtimonies beſides that which Mr. *S.* quotes, for he ſaith, though the Chriſtians did not with *Celſus* and the Heathens offer their Firſt-fruits to *Dæmons*, yet they did offer them to him who ſaid, Let the Earth bring forth—*to him we offer our Firſt-fruits to whom we ſend up our Prayers* (*g*). Now we know the Heathens then gave Tithes to their Deities, and often called them *Firſt-fruits* (as was ſhewed before) wherefore *Origen* may well be interpreted

1. *Irenæus*, *An.* 180.

(*d*) *Baſil.* de Sp. Sanct. c. 25.

(*e*) Adverſ. hæreſ. l. 4. c. 34.

(*f*) Id. ibid. cap. 27.

Origen, *An.* 200.

(*g*) Ὧ δὲ τὰς ἀπαρχὰς ἀποδίδομεν, τούτῳ καὶ τὰς δεήσεις ἀναπέμπομεν. in *Celſ.* l. 8. p. 400.

terpreted of Chriſtians offering *Firſt-fruits* in the proportion of a Tenth alſo; eſpecially if we obſerve his diſcourſe about that proportion elſewhere, *The number Ten* (ſaith he) *is venerable alſo in the New Teſtament —— and becauſe one Chriſt is the Author, Fountain, and Original of all, therefore the People offer Tithes to the Miniſters and Prieſts (h).* He ſpeaks in the Preſent Tenſe as of a thing done in his time, which as it proves the matter of fact, ſo that large Quotation produced by Mr. *S. (i)* ſhews it was *Origens* Opinion, that the Law for Tithes ought ſtill to remain in force; which Teſtimony, though it be long, yet becauſe it is imperfectly cited by Mr. *S.* and is full to the purpoſe, we will cite at large. "It is fit and profitable to offer *Firſt-fruits* "to the Prieſts of the Goſpel alſo, for ſo hath the Lord "ordained, that they who preach the Goſpel ſhould live "of the Goſpel. * [And as this is juſt and decent, ſo on "the contrary, I think it, indecent, unworthy, and impi-"ous, that he who worſhips God, and enters his Houſe, "who knows the Miniſters and Prieſts wait at the Altar, "and ſerve to the preaching of the Word and the miniſte-"ries of the Church, ſhould not offer to the Prieſts the firſt "of thoſe Fruits which God hath given by him making the "Sun to ſhine and the Rain to fall: Such a Soul ſeems to "me to have no remembrance of God, nor to think or "believe he gave theſe Fruits, ſince he hoards them up as if "God had nothing to do with them; for if he believed "them Gods gifts, he would know he ought to honour "God with his gifts and bleſſings, in rewarding the Prieſts.] "And that we may be further taught by Gods own words, "theſe things are to be obſerved according to the letter, "let us further note, the Lord ſaith in the Goſpel, *Woe to "you Scribes, Phariſees, Hypocrites, who give Tithes of Mint, "Anniſe, and Cummin, but omit the greater things of the "Law; Ye Hypocrites, theſe things ye ought to have done, "and not to have left the other undone.* Mind well how "the Word of the Lord would by all means have the "greater things of the Law done, but ſo as theſe things "which are intended to ſtand according to the letter, be "not

(*h*) In Geneſ. hom. 16.

(*i*) Hiſtory of Tithes, chap. 4. pag. 40, & 41.

* All included in theſe marks [ ] is omitted by Mr. *S.*

"not omitted. But if you ſay, This is ſaid to the *Phariſees*, "not to his Diſciples, hear him again ſaying to his Diſ- "ciples, *Except your righteouſneſs exceeds the righteouſneſs of* "*the Scribes and Phariſees, ye ſhall not enter into the Kingdom* "*of Heaven*; what therefore he would have done by the "*Phariſees*, much more abundantly would he have that ful- "filled by his Diſciples; [but what he would not have to "be done by his Diſciples, he would not bid the *Phariſees* "do;] How therefore doth my righteouſneſs exceed the "righteouſneſs of the *Scribes* and *Phariſees*, if they dare "not taſt of the Fruits of the Earth, before Firſt-fruits "are offered to the Prieſts, and *Tithes* ſet apart for the *Le-* "*vites*; and I doing neither of theſe, do ſo uſe the Fruits "of the Earth that the Prieſt knows not of them, the "*Levite* is not acquainted with them, and the Altar re- "ceives no part from them. On theſe grounds he thus concludes, —"This we ſay, to prove that the Law of "Firſt-fruits of Fruits and Cattel, ought to ſtand according "to the letter (*k*). The Greek of this is not extant, but the Latin Tranſlation here cited is S. *Hieroms*, whoſe ability and integrity cannot be doubted; and it is a great proof this is a genuine piece of *Origens* works, ſince S. *Hierom* took it to be ſuch within 150 years after *Origens* death, ſo that Mr. *S.* need not have ſcrupled this Tranſlation. And becauſe Mr. *S.* objects againſt this, as ſome do alſo againſt other Teſtimonies of this Age, becauſe they mention *Firſt-fruits* rather than *Tithes*, I will here once for all anſwer that Exception: Firſt, by obſerving that Tithes and Firſt-fruits are much of the ſame kind, both enjoyned by *Moſes* Law, and given to maintain that Prieſthood, both paid then with divers Ceremonies annexed, and therefore if The Fathers grant *Firſt-fruits* muſt ſtand, what reaſon can be given why not *Tithes* alſo? 'Tis plain *Origen* thought the connexion ſo neceſſary, that he brings a Text for Tithes to prove Firſt-fruits in force, and he here uſes the words promiſcuouſly, as believing the eſtabliſhing of the one confirmed the other alſo. Secondly, Not only he, but all the Greek Fathers (in imitation of the *Gentile* Learned

(*k*) *Origen.* in Numer. hom. II.

Writers in that Language) frequently used Ἀπαρχὰς for *Tithes*. So *Dion. Halicarnasseus* saith the *Pelasgi* vowed Δεκάτας τῶν γενησομένων ἀπάντων· yet calls the payment of them, *Giving of First-fruits* (*l*); and Δεκατηφορεῖ ἀπαρχαὶ in *Callimachus*, is expounded by Mr. *S. First-fruits in Tenths* (*m*). Thus *Maximus Tyrius* calls the Donation of *Pausanias* and *Lysander*, Δεκάτην, *a Tithe*; yet in the next words he saith, it was *the First-fruits of War* (*n*). *Porphyry* also, and other Heathen Authors, use the word Ἀπαρχαὶ for *Tithes*, and so doth *Philo Judæus* (whose Phrases many of the Greek Fathers use) for in him Tithing of Cattel is called ἀπάρχεσθαι δεκάτας ἀπὸ ζώων (*o*), and he puts δεκάτας and ἀπαρχὰς ἀναπέμπειν, for the same thing (*p*). Elsewhere also he expresses Tithing of Corn by δεκάτας ἀπὸ σίτου ἀπάρχεσθαι (*q*), and calls the Tithe of Cattel, ἀπαρχὰς (*r*); so that his Translator scruples not to turn ἀπάρχεσθαι by *Exiguntur decimæ* (*s*). The like use of ἀπαρχαὶ is often found in S. *Chrysostome*, who expressly calls those very Tithes which *Abraham* gave *Melchisedec*, τὰς ἀπαρχὰς τῶν αὐτῷ πεπονημένων (*t*). But I need not multiply Examples in so plain a case, these with many more, which others may observe, being sufficient to shew the words are used promiscuously, only we may conjecture that the Christian Fathers used the word *First-fruits* rather than *Tithes*, because they were generally of the very best (*u*); and because First-fruits were more or less according to devotion of the giver, and since the Christians usually gave more than a Tenth part, it could not so properly be called a *Tithe*, but *First-fruits* of the best parts, and in the largest proportion that bounty and devotion did direct. But we proceed.

(*l*) *Dion. Halic.* Antiq. l. 1.
(*m*) Hist. *Tithes* Chap. 4. p. 30.
(*n*) Ἐκ πολέμων δὲ ἀπαρχαί· *Max. Tyr.* dissert. 14. p. 142.
(*o*) *Philo* de congr. quærend. erud. gratia, p. 437.
(*p*) Ibid. p. 437, 438.
(*q*) Lib. de Charitate, p. 704.
(*r*) Idem ibid.
(*s*) Lib. de Sacerd. honor. p. 832.
(*t*) *Chrysost.* in Hebr. Hom. 12. Tom. 4. p. 497.
(*u*) LXX. 1 Sam. xv 21. James I. 18.

Cyprian, An. 250.

S. *Cyprian* is our next Witness, and he twice expressly names *Tithes*, and is a good evidence that Christian Oblations in his days were expected to be *Tenths* at least, as we have proved before, and shall only note, that S. *Augustine*, who lived in *Africa* also, nigh to *Carthage*, of which S. *Cyprian* was Bishop about 130 years before, saith expressly, *Our Fore-fathers abounded in all plenty, because they gave Tithes* (*w*); which if we expound of their Great Grandfathers,

(*w*) *Augustin.* homil. 48.

it

it will reach S. *Cyprians* time, and prove Tithes usually paid in *Africa* about the middle of this 400 years. And if Mr. *S.* can find no Canon for this payment of them in the *African* Councils (as he saith) (*x*); the reason is obvious, because they paid them freely, and needed no Law to compel them: yet we find in that collection of old *African* Canons, which we call the Council of *Carthage*, mention of *the First-fruits of Grapes and Corn*, which being writ in Greek may well be interpreted of *Tithes* (*y*). As also may that Phrase of S. *Gregory Nazianzene*, who saith, *It is just and pious to consecrate the First-fruits of the Barn-floor and the Wine-press to God, because both we and all we have proceed from him* (*z*); nor can it be unlikely he should judge Tithes fit for Gospel-Ministers, who believes Christ himself first received them, saying, *Christ is called* Melchisedec, *as receiving Tithes frrm the Patriarchs* (*a*); upon which place his Commentator notes, *That* Abraham *by this fact taught all Mankind to shew themselves grateful to the Priests, and give them Tithes of all Gods gifts* (*b*). To him may be added S. *Hillary* of *Poictiers*, who thinks our Saviour did therefore tell the *Pharisees* they ought to pay Tithes according to the Law, *because it was useful in order to those things which were to be settled afterwards by that pattern* (*c*), implying, that our Saviour intended to settle Tithes in the Christian Church; but we hasten to more full proofs.

(*x*) Review, Chap. 4. p. 462.

(*y*) Concil. *Carthag.* Can. 40. *Bever.* Tom. I. p. 565.

Gregory Nazianzene, *An.* 370.

(*z*) *Naz.* Ep. 80. ad Aer. & Alip.

(*a*) *Nazianz.* orat. 5.

(*b*) *Elias Cretens.* in 5. orat.

Hilarius Pictaviensis, *An.* 360.

(*c*) *Hilar.* Explan. in Math. Can. 24.

Epiphanius is next to be considered, who writing in Greek, names not *Tithes*, but includes them under the Title of *First-fruits*; and saith, *The Divine Scripture saith to the Pastors, because of their continual employment about the People, and their frequent service in Ecclesiastical Administrations*: Who feedeth a flock, and eateth not of the milk of the flock, or who planteth a Vineyard, and partaketh not of the fruit thereof (*d*)? *And again*, The husbandman that laboureth ought to be partaker of the First-fruit (*e*). *So that to secure the Bishops and Priests from wanting fit provision, it exhorts the People to give them maintenance out of their just labours, by First-fruits, oblations, and other things* (*f*). And he adds, *That Ministers had a right to these First-fruits and*

Epiphanius, *An.* 375.

(*d*) 1 Cor. ix. 7.
(*e*) 1 Tim. ii. 6. ubi Græc. Δεῖ πρῶτον τῶν καρπῶν μεταλαμβάνειν.
(*f*) Panar. l. 3. Tom. 2. hær. 80. p. 476.

Oblations, so that they who needed them not for themselves, took them of the People and gave them to the Poor. By which it is plain *First fruits* were paid as due by Gods Law in *Epiphanius*'s time; and that he thought them so, appears by his citing Texts out of the New Testament for them. And if we consider the Doctrine of the Fathers, the use of Ἀπαρχαὶ, and the Devotion of the Age, we shall see cause enough to believe, the proportion of these *First-fruits* were a Tenth at least; and we have proved before, that *Epiphanius* did not account Tithes, but the *Jewish* manner of paying them to be Ceremonial. We shall put Greek Fathers together, and the next is,

S. *Chrysostom An.* 390.

(*g*) In Genes. hom. 35. Tom. I. pag. 286. Versio Lat. ver. —*primitias & decimas.*

S. *Chrysostom*, who saith, *That* Abraham *in paying Tithes to* Melchisedec, *is still a Tutor to all, to express much gratitude, and to bring in the First-fruits of what God gives* (*g*). As before he called *Abrahams* Tithes by the name of *First-fruits*, so here from his Tithing he infers our paying *First-fruits*, that is doubtless such First-fruits as *Abraham* paid in the proportion of a Tenth, for he manifestly uses Ἀπαρχαὶ here for *Tithes*. And further, to assure us he would not have us pay that which he calls *First-fruits* in a less proportion, he saith elsewhere, to one who thought a Tenth was a large quantity to give to the Ministers; *Oh what a shame is this! that what was no great matter among the Jews should be pretended to be so among Christians; if it was a dangerous thing to fail of giving Tithes then, to be sure it is more dangerous now* (*h*). He must mean it was dangerous to the Soul not to give Tithes now, because there were no Temporal Laws then to punish the omission, and therefore he thought Tithes due by Gods Law, and that God would punish the neglect, and Men might be ashamed to think Tithes were too much. Both these Mr. *S.* omits, and the next Testimony he both casts back into the next 400 years, and cites it imperfectly to take off the force of it (*i*); but the place at large is thus: *When the Artificer sells any thing of his Art, let him pay a First-fruit* (*or* Tithe (*k*)) *of honorary acknowledgment out of it unto God, let him cast a small part to him, for I require no great matter, but so much as the Jews* (*who*

(*h*) In Ephes. Serm 4. Tom. 3. p. 784.

(*i*) Hist. *Tithes*, Chap 5. p. 56.

(*k*) Gr. ἀπαρχέω, Philo's word for *Tithing*.

were

were Infants in Religion, and loaden with many ſins) paid, let us that expect Heaven do ſo much. *I ſpeak not this as making a Law, or forbidding to give more; but requiring that leſs than* a Tenth *be not conſecrated; and not the Seller only, but the Buyer muſt do this. This Rule they alſo muſt obſerve in their profits, who are poſſeſſors of Fields; This muſt be obſerved by all that gather any juſt increaſe* (*l*). Where we ſee he abſolutely requires, that Chriſtians ſhall pay at leaſt *a Tenth* of all perſonal and predial Profits, and allows no liberty at all unleſs it be to give more. So that when he perſwades the People to build and endow Churches in the Country, thoſe *Firſt-fruits* which he adviſes them to make a dowry for thoſe Churches, were queſtionleſs intended to be in the proportion of a Tenth. *Is it not* (ſaith he) *a ſmall thing out of all thy Fruits to take a part for God? and Firſt fruits in the firſt place, which will make the Husbandman to be bleſſed* (*m*). where he alludes to the bleſſing with all plenty, promiſed to ſuch as pay Tithes. It is clear by theſe places, that S. *Chryſoſtoms* Opinion was, that Tithes were due by Gods Law, and it is likely he did convince the People thereof, ſo that they gave Tithes at leaſt, beſide other Oblations, or elſe whence could that great Revenue of the Clergy ariſe, which made ſome to envy them, and forced S. *Chryſoſtom* to write that Apology, intituled, *That we ought not to reproach the Prieſts for their plenty, but according to the uſe of our Forefathers, rather to bring in to them ſuch things as we have* (*n*).

(*l*) Hom. 43. in 1 Cor. Tom. 3. pag. 534.

(*m*) Hom. 18. in Act. Ap. Tom. 4. p. 716.

(*n*) Hom. 103. Tom. 6. p. 896.

S. *Ambroſe* (whom Mr. *S.* alſo caſts into the next Chapter) ought to be placed here, becauſe he died before the end of this 400 years: And it is granted by the Tithe Hiſtorian, *That it may be collected out of his Sermons, that they were offered under the name of Tenths in* Italy, *in his time* (*o*). Theſe Sermons of his therefore are allowed for genuine by Mr. *S.* And Dr. *James* in his exact cenſure of the Fathers, *p.* 28. doth not reject either of thoſe two, out of which the Teſtimonies for *Tithes* are taken, *It is not enough that we bear the name, if we do not the works of Chriſtians* (ſaith S. *Ambroſe*) *and the Lord hath commanded that our Tithe of all our Fruits, Cattel, &c. and it it alſo written, Give Tithes of all your*

S. *Ambroſe*, *An.* 380.

(*o*) Hiſt. *Tithes*, Chap. 5. p. 46.

your labours, (so he goes on to cite the Texts of *Moses*, *Deut.* 14, and 28. with the Blessings promised to this duty in the Old Testament, as if it were the Lord Jesus his command in the New Testament, and *also* written in the Old besides; and then he goes on) *The Nine parts are given you; but if you will not give Tithes, you shall be reduced to a Tenth* (p). The rest cited by Mr. *S.* is in another Sermon, viz. *Whoso remembers he hath not faithfully paid his Tithes, let him now amend what he omitted. What is it to pay Tithes faithfully, but that you never offer the worst nor the least to God, either of your Corn, Wine, Fruit of Trees, of Cattel, or of your Garden, your Merchandize, and your hunting. Of all the substance which God hath given a man, he hath reserved a Tenth part to himself, therefore it is not lawful to retain that which God hath reserved to himself* — (So far Mr. *S.* but S. *Ambrose* proceeds to tell them) — *God will take away the Nine parts, if we give him not the* Tenth, *and he that restores not what he hath unjustly taken from God, that man neither fears God, nor knows what true repentance and confession means* (q). Here a faithful yearly payment of all kind of Tithe is reckoned a Christian work, commanded by God, who will bless the observers, and punish the breakers of this Law; yea, the Tithe is due to God, being reserved to his own use, and the Nine parts only are our own, so that he is unjust, ignorant and wicked, who detains his Tithes. Nothing can be fuller than this proof, which is not to be evaded by that shift of Mr. *S. pag.* 55. that *he takes his whole Doctrine from the Law given to the Israelites*; for he first says the Lord commands it, and then brings in the Old Testament Texts as collateral proofs; and yet if S. *Ambrose* had taken his Doctrine from these Proofs out of *Moses* Law, it would follow, that he believed these Texts were no part of the Ceremonial Law, but really binding to us still, who have a Priesthood to maintain as well as they; and the reason of the duty continuing (which it doth notwithstanding any Ceremonies abrogated) the duty remains still, and the Texts for it in the Old Testament are yet in force.

(p) *Ambros.* Ser. 33. feria 2. post Dom. 1. Quadr. T. 5. pag. 46.

(q) Ser. 34. fer. 3. post Dom. 1. Quadrag. ibid. p. 48. Vide item Ser. de Ascens. Domini, ib. p. 48.

§. IV.

§. IV. Having seen the Opinion of single Fathers for this Period, we need not doubt but (if occasion had been) the Synods (which are the same men met in one body) would have made Canons for payment of these Dues; but since Christians paid them liberally and voluntarily, the Canons of this Age concerning this matter do rather direct the Distribution, than enjoyn the payment. Mr. *S.* begins with the *Clementine* Constitutions, as most easie to be disproved; but we must give the precedence to the *Apostolical Canons*, which Mr. *S.* calls *those counterfeit Canons, which some too credulously received, as made by the Apostles* (*r*). Indeed those who received them as made by the Apostles themselves, were as much too credulous, as they are too confident who call them *counterfeit Canons*: for these very Canons are declared genuine by the sixth general Council (*s*), yea they are cited and referred to by S. *Basil*, *Alexander* of *Alexandria*, and *Athanasius*, by the first general Council at *Nice*, and many other of the most ancient Fathers, as is fully proved by a late Learned Tract on this subject (*t*), wherein it is satisfactorily demonstrated they were the Decrees of those Apostolical Bishops who governed the Church in times of Persecution, made in divers Synods at several times, but collected into one body before the year 300, so that they were the only Canon Law of the Primitive times. Now in these Canons, after the prohibiting of bringing any other fruits to the Altar, except only what was useful for the Sacrament, it is said, *All other fruits shall be sent to the Bishops house, as First-fruits for the Bishop and Presbyters; and it is agreed the Bishops and Presbyters must distribute it to the Deacons, and the other Clergy* (*u*); which plainly declares it was a Custom then to offer First-fruits in so large a quantity, that it was sent to the Bishops house *in specie*, to be laid up as a common stock for him and his Clergy; and since *Irenæus* and *Origen* before cited do both attest this usage, and also declare the quantity of these First-fruits was to be a Tenth at least, we need not doubt but those Primitive Christians did pay Tithes (usually called Ἀπαρχαὶ in Greek Writings, such

(*r*) Hist. *Tithes*, c. 4. p. 43.

(*s*) Concil. *Constant* in Trul. Can. 2. An. 680.

(*t*) *Beverige*, Vindic. Can. Primitivæ Eccles. l. 1. cap. 3, 4, 5, 6.

(*u*) Apostol. Can. 4. *Bever.* Concil. T. 1. pag. 3.

such as this Canon is) or more than Tithes, and therefore the Canons of that Age do give the Bishop power over them, and direct him so to distribute them as to reserve a liberal maintenance to himself (*w*); but nothing proves this Custom and its antiquity more clearly than one of the first Councils after the setling of the Church, *viz.* that of *Gangra*, which condemns the *Eustathian* Hereticks, *for taking to themselves and their own party, as Saints, the Ecclesiastical tribute of Fruits, which of old time were given to the Church* (*x*), *pronouncing an* Anathema *against all that give or receive them out of the Church, without the consent of the Bishop or his deputed Procurator* (*y*). And surely if these First-fruits were said to be given of old time to the Church, in the year 324, we cannot doubt but they were in use from nigh the very Apostles times; and by this time the right was so established, that the alienating them was held a sin deserving *Excommunication*; and surely the quantity also was a *Tenth* at least, because the Bishop had a peculiar Officer to receive them. And this is that same Revenue, which the Council of *Antioch* calls *The things of the Church*, and *The Churches goods*, said to consist of *the Rents of the Church, and the Fruits of the Fields*, that is, of Houses and Land let out for rent, and of Tithes paid in kind (*a*). Concerning the distribution whereof the same care is taken as was before in the Apostolical Canons. The Fortieth Canon also of the Council of *Carthage* made about this same time, mentions *First-fruits* as usually offered in *Africa* (*b*), as we noted before. And a more ancient Council than any of these at *Ancyra*, calls this very offering τὸ Κυριακὸν, *the Lords part*, and forbids the alienation thereof (*c*), before which time also it seems the Faithful used to desire the blessing of the Church upon their Fruits, that is, when they made this oblation of *First-fruits* (*d*); from whence we may infer the great antiquity of such kind of *First-fruits* as we have above described. And therefore having so many genuine proofs hereof, we shall not undertake to justifie the whole collection of *Clements* Institutions, only we affirm there was such a Book anciently received in the Church, cited by many

(*w*) Apostol. Can. 38, 41. ibid. p. 26, 28.

(*x*) Concil. *Gangrens.* An. 324. præfat. ap. *Bever.* Tom. 1. p. 416.

(*y*) Ibid. Can. 7, 8.

(*a*) Concil. *Antiochen.* An. 341. Can. 24, 25. τὰ τῆς Ἐκκλησίας — πράγματα ἐκκλησιαστικὰ. — τοὺς πόρους τῆς Ἐκκλησίας καὶ τῶν ἀγρῶν καρπούς. *Bever.* Tom. 1. pag. 451.

(*b*) Concil. *Carthag.* Can. 40. *Bever.* Tom. 1. p. 565.

(*c*) Concil. *Ancyran*, An. 315. Can. 15. ibid. p. 390.

(*d*) Concil. *Elliber.* An. 305. ap. *Bin.* Tom. 1. p. 196.

many of the Fathers (*e*), and particularly *Epiphanius* twice mentions this Book, once by quoting a proof out of it (*f*), and at another time he saith, *These Constitutions are doubted by many, but not rejected, for all regular order is found in them, and nothing delivered which is corrupted, in Faith, in Confession, or in Ecclesiastical Rule and Discipline* (*g*). And that Oecumenical Council which Mr. *S.* saith, branded it for a Counterfeit, only notes, it had been corrupted by Hereticks (*h*); but this Council was 300 years after *Epiphanius*, and though we doubt not but it is now corrupted in divers places, yet we cannot well suppose any Heretics should corrupt it in the point of *Tithes* and *First-fruits*, because the Orthodox Fathers then held they were due; and no Heretics were ever taxed for holding opinion they ought to be paid, and therefore in this point they are Orthodox, and therefore those full and expres commands in those Constitutions for payment of *First-fruits* and *Tithes*, are not unlikely to be genuine, and may stand for a proof of their payment within the first 400 years; for many Learned Men believe the Piece to be ancient, and in this as well as many other particulars very agreeable to the Rites and Discipline of the first Ages. As for that Canon of the *Roman* Council under *Damasus*, An. 380. *That Tithes and First-fruits should be given by the Faithful, and the detainers excommunicated*, we cannot with Mr. *S. confidently conclude it is suppositious; and he himself is not very confident since he bids us Remember, that some colour is for the truth of such a Constitution, in regard that about that time the first Memory of Tithes is by that name paid in the Primitive Church* (*i*), yea paid in *Italy*, as he confesses in the next Page; which makes it no ways unlikely, that a Pope then might make such a Decree, especially if we consider that S. *Hierom* was of Opinion, *Tithes* were due under the Gospel, and he generally led Pope *Damasus* in all Questions. But Mr. *S.* objects, that *Baronius* first printed this Canon; to which I reply, that *Baronius* is by Mr. *S.* sometimes called *a great and learned Cardinal*, and upon his credit alone he rejects the witness of many Ancient Authors (*k*); but *Baronius* took this Canon out of the Acts

(*e*) Can. Apost. ult. *Athanas.* Ep. ad Ammū, *Euseb.* Eccl. hist. l. 1. *Cyril Hieros.* Catech. 18. *Chrysost.* in Math. hom. 43.

(*f*) *Epiphan.* Panar. l. 1. T. 3. hær. 45.

(*g*) Idem l. 3. Tom. 1. hær. 70.

(*h*) Concil. *Const.* in *Trullo*, Can. 2. An. 680.

(*i*) History of *Tithes*, Chap. 4. P. 45.

(*k*) Review, p. 465.

such as this Canon is) or more than Tithes, and therefore the Canons of that Age do give the Bishop power over them, and direct him so to distribute them as to reserve a liberal maintenance to himself (*w*); but nothing proves this Custom and its antiquity more clearly than one of the first Councils after the setling of the Church, *viz.* that of *Gangra*, which condemns the *Eustathian* Hereticks, *for taking to themselves and their own party, as Saints, the Ecclesiastical tribute of Fruits, which of old time were given to the Church* (*x*), *pronouncing an* Anathema *against all that give or receive them out of the Church, without the consent of the Bishop or his deputed Procurator* (*y*). And surely if these First-fruits were said to be given of old time to the Church, in the year 324, we cannot doubt but they were in use from nigh the very Apostles times; and by this time the right was so established, that the alienating them was held a sin deserving *Excommunication*; and surely the quantity also was a *Tenth* at least, because the Bishop had a peculiar Officer to receive them. And this is that same Revenue, which the Council of *Antioch* calls *The things of the Church*, and *The Churches goods*, said to consist of *the Rents of the Church, and the Fruits of the Fields*, that is, of Houses and Land let out for rent, and of Tithes paid in kind (*a*). Concerning the distribution whereof the same care is taken as was before in the Apostolical Canons. The Fortieth Canon also of the Council of *Carthage* made about this same time, mentions *First-fruits* as usually offered in *Africa* (*b*), as we noted before. And a more ancient Council than any of these at *Ancyra*, calls this very offering τὸ Κυριακὸν, *the Lords part*, and forbids the alienation thereof (*c*); before which time also it seems the Faithful used to desire the blessing of the Church upon their Fruits, that is, when they made this oblation of *First-fruits* (*d*); from whence we may infer the great antiquity of such kind of *First-fruits* as we have above described. And therefore having so many genuine proofs hereof, we shall not undertake to justifie the whole collection of *Clements* Institutions, only we affirm there was such a Book anciently received in the Church, cited by many

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(*g*) Idem l. 3. Tom. 1. hær. 70.

(*h*) Concil. *Const.* in *Trullo*, Can. 2. An. 680.

(*i*) History of *Tithes*, Chap. 4. p. 45.

(*k*) Review, p. 465.

of *Damasus*, which 'tis likely were compiled by some considerable hand, because they were anciently read in the Church; and since this Canon was only in those Acts, it is no wonder that the later Collectors of Canons missed it. But those Collectors have another Canon of *Damasus* his making, against Lay-mens holding Oblations *sub dominio* (and not as Mr. *S.* mistakes, only for the distribution of them (*l*)), which *Damasus* condemns as a great Crime, and this Decree was grounded on S. *Hierom*'s Answer to that Question proposed to him by this Pope, *Whether Laymen might enjoy Tithes and Oblations*; from whence we may conclude that the *Oblations* mentioned in this latter Canon, were in proportion a *Tithe*; for Mr. *S.* tells us, *p.* 46. the Phrase then was *to offer Tithes, and Offerings in that quantity were made in divers places*; so that if Mr. *S.* do allow this Second Canon against Lay-mens possessing Tithes, as made by Pope *Damasus*, he may also allow the former, for excommunicating those who did not pay them: But whereas he pretends, the Epistle wherein S. *Hierom* answers Pope *Damasus* his Question, is not genuine, we reply, There is nothing in it contrary to S. *Hierom*'s Opinion, and Pope *Innocent* did long since cite it for one of S. *Hierom*'s genuine Epistles (*m*); however we will not much contend about it, being contented that we have many positive, and some probable Proofs, that *Tithes* and *First-fruits* in that Proportion were paid all along these first 400 years.

(*l*) *Binii*, Concil. Tom. I. p. 1. pag. 512.

(*m*) Decretal. *Gregor.* l. 3. Tit. 10. c. 7. pag. 1194.

CHAP.

CHAP. V.

Of the Time from the year 400, until 800.

§. I. THe Church beginning now to be ſetled, we may expect its Maintenance began to be more fixed; and Mr. *S.* confeſſeth, that in the end of the laſt, and beginning of this 400 years *Tenths were paid,* and——*great Opinion was now of their being due (n).* So that he grants Practice and Opinion both, and indeed they are ſo linked together, and the Teſtimonies for Practice do ſo frequently declare the Opinion of the Relator, that we ſhall put theſe two together, and proceed in the Hiſtory of Fathers and Councils as they relate to this matter, and we begin with

(n) Hiſt. *Tithes*, Chap. 5. p. 46.

S. *Hierom*, who having ſold his own Eſtate and given it to the Poor, was zealous to have other Clergy men do the like; and if they objected fear of wanting, he intimates they had ſtill ſuch a proviſion as the *Levites* had, and for his part he did live contentedly on that proviſion; *If I* (ſaith he) *be the Lords portion, and a part of his Inheritance, and have no part among the other Tribes; but as a Prieſt and Levite,* I live of Tithes, *and ſerving the Altar am ſuſtained by the Altar: having food and rayment with theſe I will be content, and naked follow the naked Croſs* (o). He intimates plainly that he lived of Tithes and Oblations, as the Prieſts and *Levites* did, and if this were not ſo plentiful a Maintenance as he might have had by keeping his own Eſtate, he valued not that; but was well content, if with bare neceſſaries (ſtript of all Propriety) he might follow his Lord and Maſter, who had no Inheritance, and was crucified naked; and he goes on to adviſe *Nepotian* not to deſign to grow rich by becoming a Clergy-man, which intimates the Clergy then had a liberal and certain Income, or elſe ſuch a

S. *Hierom*, *An.* 400.

(o) *Hieron.* ad *Nepotian*, Ep. 2. Tom. 1. p. 13.

design had been ridiculous. So that there is no just ground for Mr. *S.* to doubt whether S. *Hierom* pointed at the receiving of Tithes here, for he is forced to put a word into the Text, and turn *Sed quasi Levita, vivo de decimis*; *But live like a Levite, that lived of Tithes*, to make some colour for his needless scruple. And since he grants, Tithes were then paid to the Clergy; and the plain sense of this Testimony is, that S. *Hierom* lived of Tithes, as a *Levite* or Priest (names he often gives to the Christian Clergy (p)); what gross partiality is it, to strive to render it improbable that a Priest then should live of Tithes. But this place will be made clearer by adding another Testimony declaring the Opinion of the same Father, that Tithes were due under the Gospel; *That which we have said of* Tithes *and* First-fruits, *given by the People of old to the Priests and Levites, do you understand also of Christian People, to whom it is commanded* not only to give Tithes and First-fruits, *but to sell all and give to the Poor, and follow their Lord and Saviour*; *which if we will not do, at least let us imitate the beginnings of the* Jews, *giving the Poor a part out of the whole, and paying due honour to the Priests and Levites*; (here Mr. *S.* stops, but S. *Hierom* adds) *and he that doth not this manifestly cheats and deceives God* (q). Here we see he would have us understand it to be the Christians Duty to give Tithes, for they are commanded to give them; but not them only, it being one of our Lords counsels *to sell all*; yet if we cannot reach to that perfection (for this is left to our liberty) however we are bound to give as large maintenance to our Clergy as the *Jews* did to theirs, which is so just and so due to God, that to fall short of this is to rob God: so that Mr. *S.* very untruly saith, *This place is only about the neglect of payment of Tithes and First-fruits, not the right of them.* For here is an expres command for *Tithes* at least, and the right so fully made out, that withholding it is called *Sacriledge*. Nor is there better ground for another saying of Mr. *S.* that S. *Hierom* here *binds them not at all to offer this or that part, and we may as well infer he meant also, that all Men were still bound to sell all they had* (r).

(p) Ad *Evagr.* Ep. 85. Tom. 1. p. 512. In Malach. 3. Tom. 5. p. 641.

(q) S. *Hierom* in Malach. 3. Tom. 5. p. 641. & ap. *Selden*, hist. c. 5. p. 55.

(r) *Seld.* hist. cap. 5. p. 56.

It

It seems *Non solum decimas dare*, in S. *Hierom*, signifies *Non omnino decimas dare*, in Mr. *S.* otherwise, when the Father saith, we are commanded to give Tenths at least, and that we rob God if we give less than that, he would never have said, we were not bound at all to pay this or that part. And for that of selling all, S. *Hierom* plainly makes that a Counsel left to our choice, but paying Tithes a positive command; yea *Bellarmine* (though in this Question our Adversary) freely owns this difference, saying, *Though S.* Hierom *affirms it is commanded to sell all and give to the Poor, he doth not mean it is commanded absolutely, as it is to* Give Tithes, *only if any will be perfect; for of selling all he saith,* If we will not do it——*&c. but of Tithes,* He that doth not this robs God (*s*). Plainly therefore he counts paying Tithes a necessary duty, and that proportion he thinks is the least any man can give, without manifest sinning. Of this quantity therefore were those First-fruits which S. *Hierom* mentions elsewhere; *The First-fruits of all our provisions* (saith he) *are offered to the Priest, so that we taste nothing of new Fruit till the Priest hath first tasted thereof, which we do that he may lay up our Gifts and Oblations in his House, and pray to God to bless our houses* (*t*). The quantity was not less than a Tenth, since it was to be laid up as a store, and that proportion was the least which any might give, for Tithes are by S. *Hierom* reckoned among *The things that are Gods* (*u*).

(*s*) *Bellarm.* de Cleric. l. 1. c. 26.

(*t*) Com. in Ezek. cap. 44. T. 5. p. 1066.

(*u*) Com. in Math. xxii. Tom. 6. p. 105.

S. *Augustine* lived also in the beginning of this Period, *In whose Diocess of* Hippo (Mr. *S.* saith) *we may suppose Tithes were offered —— and his words enough prove, that some did in those times so offer them* (*w*); yea elsewhere he saith, *It may be collected out of S.* Augustines *Sermons, that a payment of Tithes was in use in the* African *Church* (*x*). Mr. *S.* indeed cites but one of these Sermons, but that alone is sufficient to prove, that S. *Augustine* believed Tithes were due by Gods Law; the whole is worthy to be read, though we have room only for some of the most material passages. "In "Harvest we ought to think of giving, or rather restoring "Tithes to God, that gives all we have, with Thanksgiving, "for the Giver of all is pleased to require back a Tenth "from

S. *Augustine*, *An.* 400.

(*w*) Hist. *Tithes* Chap. 5. p. 46.

(*x*) Review, pag. 461.

"from us, not for his profit but ours; for thus he promi-
"seth by his Prophet, *Malach.* III. 10. (and then citing that
Promise of plenty, and other Texts out of the Old Testa-
ment, as being yet applicable to Christian Tithing, he pro-
ceeds)—"*Tithes* are the tribute of needy Souls, give there-
"fore the tribute to the Poor, and make the offering to the
"Priest; and though you be not Husbandmen, and so have
"no Fruits of the Earth, whatever Trade you live by, it
"is of God, who requires Tithes of whatever is your
"livelyhood, whether War, Merchandize, or some Handy-
"craft Trade——And after a while, he saith ——"*Tithes*
"are required as a Debt, and he that will not give them in-
"vades anothers right. So many Poor as die of hunger, in
"the place where he dwells, who pays no Tithes, so many
"Murthers shall he answer for at Gods Tribunal, who re-
"serves to his own use that which God designed for the
"Poor; so that he who would procure either pardon or
"reward, let him give Tithes, and out of the Nine parts
"endeavour to give Alms (*y*). This Testimony is so full
and clear, that Mr. *S.* uses all his Arts to discredit it, and
first he tells us, *It hath been doubted whether it be S.* Au-
gustines, *or no* (*z*); but I reply, there is no reason for
that doubt, since, in an Age when Tithes were certainly
paid, it is not unlikely such a Sermon should be preached.
And *Cæsarius Arelatensis* (whom *Baronius* places *An.* 502,
and they who go lowest, *An.* 670.) within a short time af-
ter S. *Augustine*, cites the very words of this Sermon as a
genuine work of S. *Augustine* (*a*). Venerable *Bede* also
cites it in the next Century (*b*); yea a whole Council
quotes this Sermon under *Augustines* Name (*c*), and so doth
an old Manuscript about the year 900, as Mr. *S.* informs
us (*d*); yea *Eligius Noviomensis*, *An.* 660. uses many words
of this Sermon (*e*). So that here is evidence, that it was
taken for genuine above 1000 years ago, and within 200
years after S. *Augustines* death. But Mr. *S.* objects, that *the very
words of it are found in a spurious Piece attributed to his Father.*
I Answer, this rather shews the Sermon to be so Authentic,
that the Author of that spurious Piece hoped to set off his
false-

(*y*) *August.* de Temp. Ser. 219. Tom. x. p. 235.

(*z*) Hist. *Tithes*, Chap. 5. p. 54.

(*a*) *Cæsar.* de eleemos. hom. 14.

(*b*) *Beda* de scintillis, c. 29.

(*c*) Concil. *Tribur.* Can. 13. An. 895.

(*d*) Hist. *Tithes*, Chap. 8. p. 210.

(*e*) *Audœnus* vit. Eligii, l. 2. cap. 16.

falſe Ware with ſome Sentences known to be S. *Auguſtines* own; and yet they who will compare that ſpurious Tractate, *De rectitudine Catholicæ converſationis*, with this Sermon, ſhall find that there are but few of the ſame words there, and thoſe not in the ſame order (*f*). But that which proves it moſt clearly to be genuine, is, that this Father declares himſelf of the ſame mind in other places of his Works (omitted by Mr. *S.* but) to be now produced. "Our Fore-fathers "therefore abounded in all plenty, becauſe they gave "Tithes to God, and Tribute to *Cæſar*; but ſince Devo- "tion is decreaſed, Exactions are increaſed, we would not "let God ſhare in our Tithes, and now all is taken from "us, that which Chriſt received not, the *Publicans* ſeize (*g*). And in another place, "Take ſome part out of "your Profits; if you like a Tenth, take out a Tenth, "though that is but a ſmall part, for it is ſaid the *Phariſees* "gave Tithes;—and what ſaith the Lord, *Except your righ- "teouſneſs exceed the righteouſneſs of the Scribes and Phariſees, "you ſhall not enter into the Kingdom of heaven* (*h*); and the like might be ſhewed from other places of his Works (*i*). Wherefore we conclude this Sermon (which is neither cenſured by *Rivet* nor *Perkins*, and) which is ſo well atteſted, is a genuine Piece of S. *Auguſtine*, and this with the reſt of the Teſtimonies out of him abundantly ſhew, He believed Tithes at leaſt were due by Gods Law, and that it was Sin not to pay them.

(*f*) Lib. de rect. Cathol. conv. Tom. 9. p. 250.

(*g*) *Aug.* hom. 48. T. x. p. 119.

(*h*) Idem in Pſal. 146. Tom. 8. pag. 371.

(*i*) Enchirid. ad *Laurent.* c. 7. Tom. 3. p. 41. *De tempore*, Ser. 195, & 205. *Ad fratres in eremo*, Ser. 64.

Iſidore Peleuſiota lived in *Africa* at the ſame time with S. *Auguſtine*, and was S. *Chryſoſtoms* Scholar, ſo that his Evidence will clear the Proofs from both thoſe Fathers, and indeed he is ſo plain a Witneſs for the practice of Tithes, that it is not poſſible to invent any evaſion, for which cauſe we may fear Mr. *S.* wilfully omitted it, ſince he cites this Author ſo often (*k*), that he could not well miſs ſo obvious a Teſtimony, unleſs by deſign: For one *Herminus*, a great Officer and Count of the Empire (probably *Comes limitis Ægypti*) had ſent his Tithes to *Iſidore* and his Brethren of the Clergy, who returns him this Epiſtle, *Thou doſt rightly honour God in giving us the firſt of thy Fruits, and*

Iſidore Peleuſiota, An. 410.

(*k*) Preface p. 2. Hiſtory of *Tithes*, p. 250. Review, p. 465.

and returning the Tithes *of the increase of thy Land, unto him that gave it; by which means thou shalt long enjoy thy Estate, reserving sufficient for thy own need at present, and preparing for thy self Eternal joy hereafter* (*l*). Where we see the offering of Tithes in *Egypt* by a great Officer, is commended by an Orthodox Father, as a right way of honouring God, and a wise method both to obtain a Blessing here, and Eternal life hereafter: And *Tithes* are here expressly named, though we doubt not it is the same payment which *Theodoret* about this time means, when he saith, *Lay-men pay Tribute and Custom, and offer their First-fruits to God* (*m*); for *Isidore* here calls these Tithes, *The first of the Fruits.* And the words are used for the same thing in divers Authors, particularly in

(*l*) *Isid. Pelus.* lib. 1. Ep. 317. pag. 85.

(*m*) *Theodoret.* histor. religios. cap. 10. An. 440.

John Cassian, another of S. *Chrysostoms* Scholars (who while he was very young) was told by an old Christian, called *Theonas*, that soon after he was married, "He the "said *Theonas* carrying his Religious gifts, with other "Possessors who crouded in to offer *Tithes* or *First-fruits* "of their Estates to the Reverend Abbot *John*, He receiv-"ed this oblation gratefully, being pleased that they did "faithfully offer their *Tithes* and *First-fruits* for the use of "the Poor, as a Sacrifice of a sweet savour to God (*n*). And *Cassian* adds, "That it was the custom of this *Theo-*"*nas* to pay the *Tithes* of his Increase every year to the "house of the Ministry (*o*). Where we may see a general practice of paying Tithes in *Africa* in *Theonas* his youth, who was become very old while *Cassian* was yet a young Man, so that this Custom was at least 50 years before the year 430, and the Histories of the Church assure us, that this Abbot *John* lived about the year 380, so that this Testimony proves *Tithes* usually and yearly offered before the end of the first 400 years. But Mr. *S.* would gladly lessen the value of this proof, pretending first, *That the Abbot received them as a Treasurer for the Poor* (*p*), and yet he himself expounds *Distributing Tithes to the Poor*, to be meant of giving them to Monks, *who* (he saith) *were usually called* Pauperes, *and were so indeed by their Vow* (*q*); where-

Cassianus, *An.* 430.

(*n*) *Cassian.* Collat. 21. pag. 942.

(*o*) Ibid. cap. 5. p. 945.

(*p*) Hist. *Tithes*, Chap. 5. p. 47.

(*q*) Hist. *Tithes*, Chap. 6. p. 78.

fore

fore in that sense the Abbot might well be Treasurer for his own Monks, yet doubtless those devout *Ascetics* having renounced all Propriety, did also give of them to other Poor, when their own necessities were supplied; and partly from this renouncing Propriety, partly from the Charity of the Clergy in relieving the Poor out of their proper Portion, *Tithes* came to be called *The tribute of the needy Souls*, and *the Patrimony of the Poor*; not that the Poor had any original right to Tithes, but that the Charity of the Clergy was so great, as moved them to give the Poor a great part of them. Wherefore though S. *Augustine* and other Fathers call them rhetorically the *Tribute of the Poor, &c.* to commend the Clergies bounty, and induce the People more freely to pay that which was so charitably disposed of; yet the same Fathers shew, that *Tithes* were strictly the Clergies right alone, and from their hands the Poor received the share they had of Tithes. Yea Mr. *S.* grants, *That Tithes were given to the Clergy for the use of the Poor, and they were the dispensers of them* (r). And S. *Augustine*, in the place now cited, exhorts the People to give Alms (besides their Tithes) out of the Nine parts; the aforesaid *Isidore* (cited by Mr. *S.*) calls the Tithes there spoken of, *The goods of the Church and the Poor*, and that which he there calls οἰκεῖα τῶν πλωχῶν, *the Poors propriety*, was only the residue after the Church and Clergies needs were supplied (s), not the *Tithes* themselves, as Mr. *S.* pretends. And the next Epistle cited by him out of that Author, seems to intimate, that those *Oeconomi* had no other but this surplusage of Tithes and Offerings under their charge (t). *Balsamon* also, (whom Mr. *S.* cites to shew the Poors right to Tithes) doth in that very place shew, that the Bishops and Clergy were first to be maintained out of these Revenues, and that the remainder only went to the Poor, and it is the τὰ περισσεύοντα only, which he there calls πλωχικὰ (u). Which I do the more fully remark here, because Mr. *S.* is often urging these Tithes, in prejudice to the Clergies right of Tithes; whereas indeed those phrases commend their Charity, but do not impair their right at all.

(r) Review, pag. 465.

(s) *Isid. Pelus.* l. 1. Ep. 269. pag. 73.

(t) Ibid. Ep. 425. p. 109.

(u) *Balsam.* in Apostol. Can. 59. *Bever.* T. 1. p. 38.

all: and not only Abbot *John*, but all devout Clergy-men in that Age received Tithes as Treasurers for the Poor. Secondly, Mr. *S.* pretends this giving Tithes to Abbot *John*, is no evidence for the preaching Ministers right, *because these Abbots spoken of by* Cassian *were not properly of the ministring Clergy*: Wherein this great Critics zeal against the Clergies right, hath betrayed him into a shameful and gross mistake; for besides that *Cassian* shews, *these Abbots preached to the People*, which Lay-Monks then never did (*w*). *Sozomen* speaking of this very Abbot *John*, and another (mentioned by *Cassian*) called *Piammon*, saith expresly, *They were Presbyters, and very reverently performed the office of the Priesthood* (*x*), so that we may justly say, —— *aliquando bonus dormitat Homerus!*

(*w*) *Monachus plangentis non docentis officium habet. Hieron.* adverſ. Vigilantium.

(*x*) *Sozom.* hiſt. l. 6. cap. 26.

Prosper of *Aquitain* was *Cassians* Contemporary, and though his bitter Adversary in other things, so that he writ against that very Book of *Cassians*, out of which the Testimony of Tithes was now cited, yet he never objects against that relation; but witnesses the very same Practice, saying to the Clergy, *We willingly receive the daily Oblations and Tithes of the Faithful, and shall we lay aside the care of the Flock* (*y*): An evidence too clearly to be evaded, and therefore Mr. *S.* wholly omits it; as he also doth the Memorial of *Germanus* and *Lupus*, who came out of *France* into *Britain* about this time to extirpate the *Pelagian* Heresie, and among other things taught the *Britains* "to give Tithes of "all they possessed, and of Sheep and Cattel at certain "times, *viz.* at their making a Marriage, taking a Journey, "or undertaking any penance, which they called their "great Tithe, of which they gave two parts to their "Parish Church, and the third to their Bishop (*z*). And though the Author be not very ancient who reports this, yet the Custom of paying Tithes then in *France*, proved just now out of *Prosper*, makes it more than probable, that the two Bishops, *Prospers* Contemporaries, might teach such Doctrine. And Mr. *S.* either forgot, or else designedly omitted this proof here, for 'tis very sure he was not ignorant of it, since he cites it at large in a Book that

(*y*) *Prosp.* de vitâ contempl. lib. 1. c. 21.

Prosper Aquitan. An. 433.

Germanus & *Lupus*, *An.* 429.

(*z*) *Girald. Cambriæ* descrip. cap. 18.

that he printed three years before this History of Tithes (*a*).

(*a*) *Seld.* Analecta Anglo-Brit. l. 2 c. 2. pag. 60.

Sidonius Apollinaris, was Bishop of *Auvergne* in the same Country of *France* a few years after, and writing to *Censorius* a neighbouring Bishop, he reports, "That a poor *Levite* of his Dioceſs being fled with his Family, for fear of "the *Goths*, into the Dioceſs of *Censorius*, had there ſowed "a little field meerly for Bread to ſuſtain him and his, "wherefore *Sidonius* requeſts of *Censorius*, Not to require "of him the Canonical due out of Tillage land *, which (he ſaith) "the Poor man (whoſe ſtock and his mind both "were very low) would take for ſo great a benefit, that "he would not be ſenſible of the inconvenience of his re-"moval from his own Country; if therefore the Biſhop "would pleaſe to excuſe this *Levite* from the legal and cu-"ſtomary payment of this ſmall quantity of Corn †, he "would count he was well treated there, and return home "with thanſgiving (*b*). The Cuſtom of *France* then makes it plain, that *Sidonius* deſires this Deacon of his (who was as a Lay-man in another Dioceſs) might be excuſed from paying Tithe Corn to the Biſhop, which is called a Canonical Due, a payment ſetled by Law and Cuſtom both: but of this not one word in Mr. *S.* who only picks out thoſe Prooſs which are moſt liable to exception, of which kind is that of

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* *ut debitum glebæ Canonem non petas.*

† *Legitimam, ut mos eſt, ſolutionem per-exiguæ ſegetis.*

(*b*) *Sidon. Apol.* lib. 6. epiſt. 10.

S. Severine, who about this time is reported by his Example to have brought his new Converts in *Pannonia* to beſtow the Tenth of their Fruits on the Poor. "Wich com-"mand (ſaith *Eugippius* his Scholar, and then living) "though it was well known to all by the Law, yet as if "they had received it out of the mouth of an Angel, they "obſerved with grateful devotion. The ſame Author "further ſaith, "That God blaſted the Corn of the Inha-"bitants of *Lauriacum* (in *Auſtria*) for refuſing to do this "upon *S. Severines* admonition, who told them upon con-"feſſing their fault, That if they had offered their Tithes "to the Poor, they would both obtain eternal life, and a-"bound in all good things (*c*). But it may be conſidered,

S. Severine, *An.* 470.

(*c*) *Eugippus* vit. *S. Severin.* cap. 17, 18.

that in these Countries Religion was yet scarce setled, and therefore there was yet no setled Ministry to give them to, and in that case better were it they should be paid to the Poor then retained; yet from the custom of all other Churches we may conclude, the Clergy received these Tithes from the People (as soon as they were setled) and dispensed the remainder above their own maintenance, to the Poor. And here we may remember Mr. *S.* his wondring, "That Pope *Leo* in his Sermons *De jejunio decimi mensis*, though he be large in stirring every mans devotion to "offer parts of his Fruits to his Parish Church, yet never "mentions Tithes (*d*). I reply, There is not a word in those Sermons, *De jejunio decimi mensis*, of Contributions either in, or to any Parish Churches; but in his Sermons *De collectis*, he desires, "That in all Country Churches there may be "free Collections and voluntary Contributions of Alms. But this was for the Poor, not for the Clergy, who were then so liberally provided for, that they lived plentifully then, and out of their Superfluity fed many Poor, which perhaps made the Laity think the Clergies Charity excused them from giving Alms, and that might be the occasion of this Exhortation. However Mr. *S.* his own confession, and our many positive Proofs of Tithes being certainly paid then, make all these petty Arguments from the silence of one or two Authors very insignificant.

Leo Papa, An. 460.

(*d*) Hist. *Tithes*, Chap. 5. p. 48.

Cæsarius Arelatensis, An. 502.

Cæsarius Arelatensis is to be placed next, if we follow *Baronius* his account, and he (though with all that follow wholly omitted by Mr. *S.*) frequently declares for Tithes, saying, *Tithes are not our own, but deputed to the Church*—— and *whatever we have received from God more than we need, we must bestow it on the Poor* (*e*). He also thinks, that Christ in the Gospel comprehended his own Disciples, when he said of Tithing, *These things ought ye to have done* (*f*). And he cites many passages with Approbation out of S. *Augustines* Sermons about Tithes (*g*), which sufficiently shews he believed the Divine right of Tithes.

(*e*) De eleem. hom. 2. vel. 9. vide item Ser. 14. init.

(*f*) Idem hom. 37.

(*g*) Id. hom. 14

S. Rupertus, An. 537.

A little after this *Rupertus*, one of the Blood Royal of *France*, took upon him to convert the *Bavarians*, and had such

ſuch ſucceſs, that upon his preaching *the People diſtributed their Tithes to the Prieſts*; which the Hiſtorian brings in as an argument of their being become good Chriſtians (*h*). In like manner

(*h*) *Aventinus*, Annal. *Boior.* lib. 3. p. 194.

S. *Eligius*, who converted *Flanders*, perſwaded his new Converts, *To give Oblations and Tithes to the Church*, preſſing them with the Authority of S. *Auguſtine* in the Sermon cited before (*i*). And there is one of his Homilies yet extant, which ſhews he eſteemed Tithes were due to the Church (*k*).

S. *Eligius* *An.* 620.

(*i*) *Audœnus* vit. *S. Eligii*, l. 2. c. 16.

(*k*) *Eligii*, Serm. 13. *Bib. patrum*, Tom. 7.

Antiochus alſo, a Greek Father, hath a large Homily in the *Bibliotheca Patrum*, preſſing the payment of *Firſt-fruits* as Due by Gods Law; and it is obſervable that he brings all the Texts for Tithes to prove *Firſt-fruits* are due, which ſhews he meant *Tithes* under the name of *Firſt-fruits* (*l*). To him may be joyned *Bonifacius Moguntinus*, who ſpeaks of *Tithes* as a uſual and cuſtomary due almoſt in the ſame words with *Proſper*, but he ſhall be cited in the Chapter of *Engliſh* Practice. *Alcuinus* alſo will be mentioned in the next Period (though he lived in this;) and he in his directions for the Penitents confeſſion of Sin, makes one Tranſgreſſion to be *the not paying Tithes and Firſt-fruits* (*m*), which ſhews it was by him judged a Sin to detain them. But we need not multiply Proofs in a caſe ſo plain, as this is now evidenced to be, wherefore we conclude, That it was the Opinion of all the Fathers of this 400 years, that Tithes were due to the Clergy by Gods Law, and that the Peoples practice generally was to pay them.

Antiochus *An.* 630.

(*l*) Hom. *Antioch.* 120. *Bibl. Patrum*, T. 1. edit. *Pariſ.* p. 1224.

Bonifacius Mogunt, *An.* 750.

Alcuinus, *An.* 780.

(*m*) Lib. de *Pſalm. uſu*, part I. p. 166.

§. II. Since *Tithes* in general were thus fully believed to belong to the Church, it is not much to the Queſtion what Portions of them were aſſigned by Kings and Biſhops to this or that Church or Monaſtery, becauſe that only concerns the diſpoſition of what was owned the Churches right before, for which cauſe I cannot allow the Inſtances here given by Mr. *S.* being moſt of them in *France* (where Tithes were certainly paid long before any of theſe Aſſignations) to be any more than a meer diſtribution of certain

tain portions due to the Church in general, and paid before perhaps by ſome other part of the Clergy, but now fixed on ſome other Church or Monaſtery with the Biſhops conſent. And firſt for the Antiquity of ſuch Aſſignations Mr. *S.* rightly obſerves, that thoſe words in the Council of *Arles* (*n*), and in the *Capitulars* (*o*) *An.* 813. *That Churches anciently Conſtituted, ſhall not be deprived of Tithes, or of any other poſſeſſions*, do prove there were Churches endowed with Tithes long before the end of this 400 years; and though one of the ancieſt Inſtances he gives of ſuch an aſſignation, be that of K. *Pepin*, *An.* 750. *who gave all the Tithes he had between the two Rivers of* Ourk *and* Leſche *to the Church of S.* Monon (*p*); yet this may very probably be no more than a reſtitution of Tithes formerly taken from the Church implied in thoſe words, *Quas habet, the Tithes which he had*: but ſuppoſing it were Tithe of his own demeſns, aſſigned by the Biſhops conſent to *S. Monon*'s Church, there are far elder Teſtimonies of the aſſignation and ſetling of Tithes upon particular Churches. S. *Remigius*, Biſhop of *Rhemes*, in his Will yet extant, gives Tithes to the Church of *Rhemes*, *An.* 540. (*q*). The Priviledge of Pope *John* the Third, mentions Tithes given to Church of S. *Medard*, *An.* 562. (*r*). *Leodebodus*, Abbot of *Floriac*, gave the Tithes of ſome Villages to that Church, *An.* 620. (*s*). The Tithe of *Rodulfs* Court (Mr. *S.* ſaith) was given to the Church of *Arras*, *An.* 680; but (which Mr. *S.* omits) the Hiſtory ſaith, it was by the conſent of *Vindicianus* the Biſhop, and was confirmed by King *Theodoric* and Pope *John* the Fifth (*t*). He mentions alſo King *Pepins* confirmation of Tithes to the Abby of *Fulda*, *An.* 742. but omits again, that Biſhop *Boniface* the Founder, in the very Epiſtle cited ſaith, *He had firſt gotten the Popes Priviledge, and ſetled it by his own Charter*: ſo that King *Pepin* only confirmed what was firſt given by the Biſhop, and allowed by the Pope (*u*); but Mr. *S.* deſignedly conceals what his Authors ſay concerning Eccleſiaſtical conſent to the Aſſignations to make way for his falſe pretence of arbitrary Lay Conſecrations. Whereas theſe firſt Inſtances being

(*n*) Concil. 4. *Arelat.* Can. 9.

(*o*) *Capitular.* l. 2. cap. 36. & ibid. c. 154.

(*p*) Hiſt. *Tithes*, Chap. 5. p. 50.

(*q*) *Flodoard.* hiſtor. *Rhem.* l. 1. c. 18.

(*r*) *Quercetan.* not. in *Abelard.* pag. 1160.

(*s*) Proem. *Helgaud. Floriac.* ad Epit. vit. *Roberti* Regis.

(*t*) Chron. *Cameracenſe*, lib. 1. c. 15.

(*u*) *Boniſ. Mogunt.* Ep. 151.

being all of them Aſſignations made by Biſhops, or with their conſent, do ſufficiently ſhew, theſe either were not new Tithes, or however not Lay or arbitrary Conſecrations. At this time alſo Pope *Zachary* gave his Priviledge to the Monaſtery of *Monte-Caſſino*, that no Biſhop ſhould take Tithes thereof, *An.* 748. intimating, they uſe to take Tithes of others then. And for the other Donations which Mr. *S.* mentions in the Margin, *pag.* 50. of King *Pepin*, *&c.* in the Chartulary of *Utrecht*. Let it be noted, that the *French* Kings uſed not to make any ſuch Aſſignations without Eccleſiaſtical conſent, for the Emperour *Charles* the Great had the Popes conſent to both thoſe Aſſignations of Tithes he made to the Abbeys of *Herſfield* and *Erſburg* (*w*). So that Mr. *S.* need not wonder he can find no Precedent or Form in *Marculphus*, *An.* 660. of any Lay-man's Grant, or arbitrary Conſecration of Tithes, though that Author hath collected all other Forms of Conveyances uſed in his time; for indeed there were no ſuch Grants in *Marculphus* his time, Tithes being then diſtributed and diſpoſed of only by the Biſhops, and if any Lay-man did deſire to give any New Tithes to a Monaſtery or Church, he applied himſelf to the Biſhop to conſent to his deſire, and to make the Conveyance; which Grants of the Biſhops were afterward confirmed by the Pope and the King. And this may ſuffice to ſhew the way of aſſigning portions of Tithes to particular Churches in this 400 years.

(*w*) *Luitprand. Ticin.* vit. *Adrian.* 2. An. 680, & *Binius* Conc. Tom. 3. p. I. §. 2. p. 181.

§. III. If we conſider the Opinion of all the Fathers of the *Gallican* Church related before, *Irenæus*, *Hilary*, *Proſper*, *Germanus* & *Lupus*, *Sidonius*, *Cæſarius* and *Eligius*, with the practice related by them, we cannot well doubt but Tithes were among the poſſeſſions of the Church, in *France*, before *Charles Martel*'s days. Wherefore it being agreed by all, that divers Poſſeſſions of the Church were taken away by this Prince and given to his Souldiers, it cannot be at all unlikely, that among other Poſſeſſions of the Church he took away Tithes. And it would be very ſtrange that Mr. *S.* both in this Chapter and the Review, ſhould labour

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ſo earneſtly to diſprove it, and to make it ſeem a common Tale, but only that it agrees not to his eſpouſed Opinion; and he ſaith, *If it were true, it were Authority of great antiquity, and fair proof both for general payment and ſpecial endowment in thoſe Times* (*a*); and for this reaſon alone he would run it down. But let it be conſidered, that Mr. *S.* grants Pariſh Churches were anciently endowed with Tithes in the year 813, and what was ancient then muſt needs be long before *Martel*'s time, *viz.* 742. We have alſo ſhewed in the laſt Section that *Biſhopricks* and *Monaſteries* were endowed with Tithes before his time, ſo that ſince *Boniface* Biſhop of *Mentz* (his Contemporary) (*b*), and many other Authors (*c*), ſay, *He ſeized on Biſhopricks and gave them to his Souldiers*; to be ſure he ſeized on *Tithes* alſo, eſpecially ſince *Rhemes* was one of the Biſhopricks he thus ſeized on, as *Papirius Maſſonius* out of *Flodoard* relates; and *Rhemes* (as we have ſhewed) was endowed with Tithes by *S. Remigius*, 200 years before. The ſame *Boniface* alſo ſaith, *Charles Martel* was, *Monaſteriorum multorum everſor & Eccleſiaſticarum pecuniarum in uſus proprios commutator* (*d*). And it is certain, that ſome Monaſteries were then endowed with Tithes; but Mr. *S.* will not allow that *Eccleſiaſtica pecunia* ſignifies Tithes, and he blames the *Century* Writers (as ignorant of the Phraſe of that time) for expounding *Pecunias Eccleſiaſticas* in a Synod of *Caroloman*, *An.* 742. by *Decimas*, for thus they read *Decimas occupatas à profanis reſtituimus* (*e*); but *Aventinus* had ſo expounded it before (*f*). *Goldaſtus* alſo had *Decimas* in the firſt Edition of his Imperial Conſtitutions, and though his ſecond Edition (as Mr. *S.* ſaith) hath *Fraudatas pecunias*, yet that Tome was publiſhed 1610; and in another later Tome, publiſhed *An.* 1613, the ſame *Goldaſtus* hath *Decimas* again, as *Aventine* and the *Century* Writers had, wherefore *Eccleſiaſtica pecunia* ſignifies Tithes, and is uſed among Chriſtians, as well as Heathens, for fruits of Corn and ſuch things as the Primitive Deacons had under their Charge (*g*), (though Mr. *S.* confidently deny it, *Review p.* 466.) indeed it is uſed by S. *Auguſtine* for any thing which we can claim by

(*a*) Hiſt. *Tithes*, Chap. 5. p. 51.

(*b*) *Epiſcopales ſedes traditæ ſunt Laicis cupidis ad poſſidendum.* Ep. *Bonifacii* ad *Zachar.* Papam ap. *Bin.* Tom. 3. part. 1. §. 1. pag. 362.

(*c*) *Hincmar.* Ep. 6. cap. 19. *Flodoard* Annal. vit. *Dagoberti.*

(*d*) *Bonifac.* Ep. ad *Ethelbaldum* ap. *Malmsbur.* l. 1. cap. 4. pag. 15.

(*e*) Centur. *Magdeb.* 8. cap. 7, & 9.

(*f*) *Aventin.* Annal. *Boior.* l. 2. ap. *Seld.* Review 466.

(*g*) Decret. Epiſt. *Anuclet.* 1. *Lucii* 1. Ep. 1. *Cyprian* lib. 2. Ep. 8. *Origen* Tract. in 16 Math.

by Law (*h*), and ſignified any ſort of Goods in thoſe Ages (*i*). And therefore by conſequence Tithes alſo, which were undoubtedly then among *the goods of the Church*; and ſince *Aventine*, the *Centuriators*, and *Goldaſtus* do affirm, *Caroloman* (Son of *Martel*) reſtored Tithes, which had been occupied by profane Souldiers, thence it follows, that his Father, *Charles Martel*, had taken them away. Beſides, it is plain that ſome of theſe *French* Princes took Tithes from the Church, and they were comprehended in thoſe general words, *Res Sacras* (*k*), and *Res Eccleſiarum* (*l*); for very ancient Authors of that Country complain, "That Lay-"men robbed Churches and Altars, and took away their "Barns full of Corn, and Cellars of Wine, yea with their "Wives and Maid-ſervants, and which was worſe with "their Whores, they eat the *Tithes* and *Oblations* of the "Faithful (*m*); and *Agobardus* blaming the Emperours Predeceſſors for turning *Res ſacras* to Lay uſes, goes on to prove Tithes due to the Church, and ſaith, "*Tithes* and "*Firſt fruits* ſhould be more venerably eſteemed, than to "to be taken for keeping Lay-mens Dogs, Horſes, and "Servants (*n*); whence it is plain he knew that the Emperors Predeceſſors had taken away Tithes, and to whom can it be ſo probably aſcribed as to *Charles Martel*, whom many Authors of both elder (*o*) and later times (*p*) charge with this piece of Sacriledge *of Taking Tithes from the Church*: and therefore we need not that Viſion of *Eucherius* to prove a matter ſo very plain; yet Mr. *S.* confeſſes that Viſion of *Martel*'s being puniſhed in Hell for this Sacriledge, hath many old Authors to atteſt it; ſee his *Review* in the Margen, *p.*465. viz. *Adrevaldus*, who lived *An.* 820. *Flodoardus*, *An.*960. and the *Capitulars*, *An.*870. To which we may add *Ivo*'s Chronicle in the life of *Carolus Simplex*, *Vincentius Bellov. Speculum hiſtor.* lib. 23. cap. 15. and our *Matthew* of *Weſtminſter*, *An.*852. All which do affirm, that *Martel* was puniſhed in Hell for taking away Tithes; but whether the Viſion be true or falſe, it is much to be doubted, that unleſs he repented, the thing is too true, for nothing is plainer than that he did commit this great

(*h*) *Aug.* Serm. Dom. in monte l. 1. c. 36.
(*i*) *Spelm.* Gloſſ. verb. *Pecunia*, pag. 455.
(*k*) *Agobardus*, de diſpenſ. p. 283.
(*l*) Capitul. Exhib. *Lothar.* 2.
(*m*) *Hincmarus* Rhem. de ſtatu Eccleſiæ, p. 653.
(*n*) *Agobardus* de Diſpenſ. rei Eccleſ. p. 283.
(*o*) *Gulierm. Br. Philippeis*, l. 10. An. 1223. Ver. Chronic. apud *Fileſac.* Eccl. *Gallic.* quær. p. 846.
(*p*) *Baronius*, Annal. A. 731. & alii multi.

Sin. But Mr. *S.* pretends, that *Ch. Martel* did not wholly take away the Church Possessions, but made the Bishops make Leases for Life of them, to such of his Captains as he appointed; and he cites a Decree of *Thierry* and this *Charles* out of *Goldastus*(*q*), reserving the *Nonæ & Decimæ* to the Church out of these alienated Possessions; but it is more probable that Reservation was made by his Son *Caroloman*, "who "(though desirous, was not yet able to restore all because "of his Wars, and therefore) decreed, That what was not "now restored, should be retained by Lease and pay Rent "to the Church (*r*). But whoever first reserved those *Nonæ & Decimæ*, it's wonder Mr. *S.* should say here, *This had nothing to do with payment of Tithes* (*s*), since he tells us elsewhere (*t*), *The* Ninth *and* Tenth *were the rent due from the Tenants of the Church-Lands, by the ordinary reservation of a Tenth, as of what was held by many of it self, due to the Clergy, and of the Ninth, as rent or consideration to be given them as Lessors for the received profits.* And indeed the Rents paid out of the Kings demesns were called *Nonæ* (*u*), but the Church Tenants anciently paid a *Tenth* besides; which is a good Testimony that Tithes were then held due to the Church, and that they could not be alienated, no not when the Land was Leased (*w*). And one of the *Capitulars* cited by Mr. *S.* p. 133. *viz.* (*x*) mentions a Decree of one of the Emperors Progenitors, according to which He now enacts, that whoever did not pay this ancient payment of *Nonas & Decimas*, should lose the Benefice out of which they were to be paid. And if it were *Charles Martel* who first reserved these *Ninths* and *Tenths*, it is a good proof that *Tenths were then held to be of themselves due to the Church*: and Mr. *S.* tells us out of the *Chartulary* of *Utretcht*, p. 73. that not only *Charles Martel* himself, but the elder *Pepin* (who was his Father) had given Tithes to that Church, and this *Pipin* lived *An.* 700; from whence it follows, that Tithes were given to Churches long before *Martel*'s time, and that is the main thing in question. We conclude therefore, that *Martel* did take Tithes from the Church as well as other possessions, and that it is evident

Chuches

(*q*) *Goldast.* Constit. Tom. 3. pag. 648 ap. *Seld.* Review. p. 466.

(*r*) Synod. *Ratisbon.* An. 742. *Binius* Tom. 3. p. 1. §. 1. p. 377. Capitul. lib. 5. c. 3.

(*s*) Review, p. 466.

(*t*) Hist. *Tithes*, Chap. 6. p. 132.

(*u*) Capit. l. 5. cap. 147.

(*w*) *Anegis.* l. 1. c. 163. p. 27. & lib. 2. ca. 21.

(*x*) Capit. l. 5. c. 145.

Churches were endowed with perpetual right of Tithes before his Sacriledge, *An.*740, or rather 731.

§. IV. Whoever impartially considers the former Proofs for general payment of Tithes to all Churches, and particular assignation of some Portions to Cathedral and Conventual Churches, as also the Opinion of the Fathers from the beginning of this 400 years for the Right of Tithes, He will not doubt but these Fathers met in Synods would make Canons for regular payment of them, as soon as the decay of Devotion made it necessary. But indeed the earliest Canons of this Age do only take care of the distribution of Ecclesiastical Revenues, which implies they were well paid, and whether they name Tithes, or no, we need not question the payment was made in that Proportion at least, because it served to maintain the Bishops and Clergy, to supply all necessaries for Divine Administrations and repairs of Churches, as also to maintain the Poor out of the remainder. And the first Council of *Orleance*, *An.*507. expressly names Tithes, saying, *The fourth part of the the Tithes, according to the* Roman *custom, must be given to the Bishop* (*y*); and Mr. *S.* cites this very Canon as genuine (only miscals it the 13*th* for the 17*th*) where it serves his purpose (*z*): but here he quarrels with it, as if *Ivo* had put in the word *Decimas*, when *Burchard* and *Gratian* read it *Oblationes fidelium*. To which I reply, That since those Offerings were from before the beginning of this 400 years made in the Proportion of a Tenth, (as he confesses) (*a*); we cannot blame *Ivo* for thus giving the true sense of that Canon, and whether his reading be right or no, the matter of fact is true and certain, that Tithes were then generally offered. But upon the decay of Devotion, the Council of *Mascon*, *An.* 586. "Intending (as they say) to "restore all matters of the Catholick Faith, which had "been corrupted by length of time; do thus declare and "decree: The Divine Laws taking care of the Priests and "Ministers of the Churches for their Inheritance, have "enjoyned all the People to pay the Tithe of their Fruits

(*y*) Concil. *Aurel.* 1. Can. 17. ap. *Bin.* Tom. 2. part. 1. pag. 550. An. 507.

(*z*) Hist. *Tithes*, Chap. 6. p 82.

(*a*) Hist. *Tithes*, Chap. 5. p. 46.

Concil. 2. *Matiscon.* Can. 5. An. 586.

"to Holy places, that being hindred by no labour they "may duly attend Spiritual Miniſtrations. Which Laws "the whole Company of Chriſtians have for a long time "kept inviolate; but now moſt of them appear in ſome "degrees Prevaricators of theſe Laws, while they neglect "to fulfil the things enjoyned by God. Wherefore we "Appoint and Decree, That the ancient Cuſtom be revi- "ved among the Faithful; And that all the People bring "in the Tithes, which ſerve to (maintain) Eccleſiaſtical "Worſhip, which the Prieſts laying out for the uſe of the "Poor and redemption of Captives, by their Prayers may "obtain peace and ſafety to the People; and if any be "contumacious to this our wholſom Order, he ſhall be "for ever excommunicated (*b*). Where we ſee Tithes are reckoned a matter of the Catholic Faith, and declared to be due by Gods Law, in obedience to which (they affirm) Chriſtians had generally and for a long time paid them, and upon late neglect, they renew the ancient Cuſtom of paying Tithes, and enjoyn it under penalty of Excommunication. This Teſtimony is ſo clear, that Mr. *S.* uſes all his art to diſparage it; and though he ſaith, *No doubt can be made, but that in moſt Churches in this time, amongſt the Offerings of thoſe of the devouter ſort, Tenths, or greater parts of their annual Increaſe, were given according to the doctrine of the Fathers* (*c*); yet he hath no mind to allow a Canon in that Age for Tithes: But his Arguments, or rather Conjectures againſt it, are ſo weak, that they expreſs his deſires rather than his power to diſprove it, I am ſure he reckons it among *the known and certain Monuments of Truth* (*d*), and allows it to be of ſome credit (*e*). But we have the expreſs Teſtimony of *Gregorius Turonenſis*, who lived in that Country at that time, and relates the whole Hiſtory of this Council, at which (he ſaith) were preſent all the Biſhops of *Guntherans* Kingdom (*f*), ſo that we are certain of the matter of fact. And though Mr. *S.* object, *That the ancient Compilers of Synodal Decrees, and particularly* Iſidore, (*who mentions other* French *Synods at* Orleance, Arles, *and* Agatha) *hath not this Council, which* (he

(*b*) *Bin.* Tom. 2. par. 2. p. 269.

(*c*) Hiſt. *Tithes*, Chap. 5. p. 65.

(*d*) Ibid. p. 62.

(*e*) Ibid. p. 46, & p. 57.

(*f*) *Greg. Turon.* hiſtor. *Francor.* l. 8. cap. 12, & 20.

(he ſaith) *was firſt publiſhed by Frier* Crab (*g*). This negative arguing concludes nothing, ſince we have *Gregorius Turonenſis*'s poſitive Teſtimony for it; and beſides thoſe Ancient Compilers omit many genuine Councils as well as this, for they commonly follow *Iſidore*, who lived in *Spain*, and was made Biſhop there but a few years after this Council, and therefore though he heard of thoſe three Councils at *Orleance*, *Arles*, and *Agatha* (*h*), the lateſt of which was above thirty years before this of *Maſcon*, yet it is very probable he might not have ſeen theſe Canons; and therefore it is no wonder if he, and all that blindly followed him, omit them, till the Induſtrious Fryer *Crab* put out the firſt general Collection of Councils. But Secondly, Mr. *S.* would inſinuate that *Agobardus*, Biſhop of *Lyons* (in which Province *Maſcon* was) about the year 828 knew nothing of this Canon, becauſe he ſaith, that nothing had then been ordained in Synods about endowing Churches, becauſe the Devotion of former Ages made it needleſs; but how unjuſtly he makes this Inference will appear from *Agobardus* his words at large: He is there pleading the right of Tithes, and anſwering their Objection who alleadged, there were no Canons of great Synods (that is, General Councils) for them at that time, and thus ſpeaks; "A man may know what Councils have defined in this "matter, if he will read and turn them over, but ſome "will not receive the *French* Canons, nor thoſe of other "Provinces, becauſe the Popes and Emperors Legates "were not preſent at the making of them —— but we "ſhould think reverently even of Provincial Councils, and "where there are no Canons of greater Synods, we "ought to conſult the Statutes of the Ancients, and to "prefer their Opinion before our own, becauſe even "Provincial Canons were made agreeable to Scripture, "and to former uſages. And now if nothing were or-"dained in Synods, or publickly preached by the Fathers "about endowing Churches, it was becauſe there was no "neceſſity, Religious devotion being then every where ſo "fervent (*i*). Can any thing be plainer, then that *Agobardus*

(*g*) Hiſt. *Tithes*, Chap. 5. p. 58.

(*h*) Concil. *Arel.* An. 552. Concil. *Arelat.* An. 524. Concil. *Agath.* An. 506.

(*i*) *Agobardus* de diſp. rei Eccleſ. contr. Sacril. p. 276.

bardus expreſly declares there were Provincial Canons for Tithes made in *France*, and other Countries before his time, which ought to ſatisfie any man, though there were no Canons of General Synods, becauſe theſe Provincial Canons were grounded on Scripture and ancient Uſage, and becauſe there would have been Canons of General Councils, but only that there was no need of them. Which is ſo far from leſſening the Authority of the Canon of *Maſcon*, that it hugely ſtrengthens it; and we muſt conclude, either Mr. *S.* never ſaw this place in *Agobardus*, or if he did he reſolved to make the moſt unjuſt pretence ſerve to diſparage this Teſtimony. To which end alſo he notes, *That the Laws which this Council calls* Divinas Leges, *muſt be the Moſaical Law* (*k*); whereas whoever will read the Canon, cannot but ſee they mean the Laws of Chriſt, for how can they ſay, *Moſes* Laws took care of the Miniſters of the Chriſtian Church, or how ſhould any Chriſtians be commended for obſerving *Moſes* Law, or Excommunicated for breaking it? Again the words, *Long time obſerved by the whole company of Chriſtians*; Mr. *S.* pretends, look back no higher than the time of S. *Ambroſe*, and S. *Auguſtine*, which yet is a fair proof of general payment ever ſince before the beginning of this 400 years; but conſidering theſe were both foreign Biſhops, and *Irenæus* was Biſhop of this very Province *An.* 180. and had preached, Chriſtians were bound to offer not leſs than a Tenth, it is moſt likely the Council of *Maſcon* refers to the Age of *Irenæus*, ever ſince which time it is very probable theſe of the Province of *Lyons* had paid Tithes.

(*k*) Hiſt. *Tithes*, Chap. 5. p. 48.

Another Decree Mr. *S.* mentions (*l*) of Pope *Leo* the Fourth, which ſaith, *It ſeemeth good not only to us, but to our Predeceſſors, that Tithes ſhall be paid by the People in right order, and only to the Mother Church* (*m*); and if *Ivo* have annexed this to a Decree of Pope *Gelaſius*, who lived *An.* 492. it is no ſuch great miſtake, for *Leo* the IV*th* indeed was not Pope till after the year 840; but in regard he refers back to the Decrees of his Predeceſſors, therefore we muſt reckon this thing had been decreed long before the end of this 400 years.

(*l*) Hiſt. *Tithes*, Chap. 5. p. 58.

(*m*) Decret. par. 3. c. 115.

But

But ſhortly after that of *Maſcon*, was that Council at *Hiſpalis*, *An.* 590, (and not 610, as it is falſe printed in Mr.*S.* p.61.) where it was decreed, "That Rich and Poor "do rightly offer all the Firſt-fruits and Tithes, as well of "Cattel as of Fruits unto their Churches, for the Lord "ſaith by the Prophet, *Bring ye all the Tithes into the Store-* "*houſe, &c. Mal.* 3.——Let every Husbandman and Artifi- "cer juſtly Tithe the profit of his labour, for as God gave "all, ſo he requires Tithe of all, of the Fruits of the "Field, of all Food, of Bees, Hony, Lambs, Fleeces, Cheeſes, "Swine, Goats, Cows and Horſes, both great and ſmall "Cattel: And if any Tithe not theſe he robs God, and is "a Thief, yea the Curſes of *Cain* are laid up for him that "doth not rightly divide (*n*). Now though the Opinion of the Fathers, the Practice of the time, and Mr.*S.* own Conceſſions, before related, make it no way improbable that ſuch a Canon ſhould be then made, yet He endeavours by all means to diſprove it. And firſt he tells us, *The Council is extant whole, and yet no ſuch Canon in it*; whereas *Garſias* in *Binius*, out of whom Mr.*S.* cites this Council here, expreſly ſaith, *I think this Council is not extant whole—— and that many other things were decreed in this Council which are not extant* (*o*). Wherefore, ſince *Garſias* his MSS. had not the whole Council, we muſt conſult the old Collectors of ſingle Canons for the reſt, and *Ivo* hath this Canon out of this very Council, and ſo hath *Burchard* alſo; and ſince Mr.*S.* quarrelled with the Canon of *Maſcon*, becauſe it was not in theſe Compilers, ſurely he will allow this which we find there. But Secondly, he ſaith, *This Canon is clearly of later times, the firſt words of it being nothing elſe but the ſyllables of one of* Charlemain's *Laws, An.* 780. To which I reply, That Mr.*S.* very well knew that thoſe Laws of *Charlemain* were no more, but a Collection taken out of former Canonical Inſtitutions, as the Emperor himſelf declares (*p*); and ſometimes the Old Council, out of which theſe Laws were taken is named (*q*); ſometimes the Council is not named, and yet the very words of ſome Old Council are ſet down (*r*), becauſe the Emperor gave it the force of

(*n*) Concil. *Hiſpal.* ap. *Bin.* T. 2. par. 2. pag. 295.

(*o*) Not. *Garſiæ* ad Concil. *Hiſpal.* ap. *Bin.* ut ſupr.

(*p*) Præfat. ad *Capitul.* l. 1.

(*q*) *Capit.* l. 1. cap. 1, 7, 14, 19, &c.

(*r*) *Capit.* l. 1. c. 23. de Concil. 5. *Aurel.* Can. 6. Ibid. c. 133. & Concil. *Nicen.* Can. 5. Ibid. cap. 135. & Concil. *Cabilon*, Can. 4. *Capit.* l. 2. c. 36. Concil. *Arelat.* Can. 9. ap. *Selden.* pag. 49.

a Law in his Dominions, and therefore no doubt these words were transcribed by *Charlemain* into his *Capitulars* out of the old Council of *Hispalis*, without naming the place whence he took it; and it is certain he transcribes the very words of another Canon, which *Ivo*, *Burchard*, and *Gratian*, do ascribe to this very Council of *Hispalis*, and which is not to be found elsewhere than in those Compilers (*s*). So that the words of this Canon being found in the *Capitulars*, is so far from weakning the Authority of it, that it shews there was a Copy of this Council extant in *Charles* the Greats time, out of which both he and these Compilers took this Canon, and therefore it stands for good Evidence after all Mr. *S.* his endeavours to disprove it.

(*s*) Concil. *Hispal.* ap. *Bin.* Tom. 2. par. 2. pag. 294. Collat. cum *Capit.* lib. 5. cap. 175.

And it doth confirm the former Canon, that a Council in *Spain* also, *An.* 633. doth decree, *According to the Authority of former Councils, the Bishop shall have the third part as well of Oblations, as of* Tithes, *and tribute of Fruits* (*t*). So *Binius*, and so the *Venice* Edition and *Caranza* read, though *Garsias* Edition have only *Oblations and tribute of Fruits*. But there is no reason why Mr. *S.* should be so angry at the Editors or Compilers of Councils and Canons, for using the word *Decimas* sometimes instead of πρόγματα, καρποφορίαι, *Oblationes*, *vota fidelium*, *res Ecclesiæ*, *&c.* since he confesses that a whole Council nigh 800 years ago, reciting a Canon of the Council of *Chalcedon* do translate τὰ Ἐκκλησιαστικὰ by the word *Decimas* (*u*); and surely they had better means then, to know what the proportion was in which Church Revenues were paid, than we can have at this distance. And the promiscuous use of these words, by men who could have no design to deceive, manifestly shews that Tithes were so certainly the known proportion in which Men then paid their dues to the Church, that it was understood, if it were not expresly mentioned. Nor can we doubt but Tithes were paid at the time of these Councils of *Hispalis* and *Toledo*, considering the Evidence before produced; and we now add, that the Council of *Agatha* (cited by Mr. *S. p.* 63.) distinguishes

(*t*) Concil. 4. *Toletan.* Can. 32. ap. *Bin.* Tom. 2. par. 2. pag. 352.

(*u*) Concil. *Tribur.* An. 890 *Bin.* T. 3. par. 2. pag. 124. & ap. *Seld.* pag. 63.

guiſhes Church Revenues into *Fields*, *Fruits*, and *Oblations* (*w*), which Threefold Revenue cannot be underſtood otherwiſe than of *Glebe*, *Tithes*, and *voluntary Oblations*, and if the Compilers do ſo expound them, they do undoubtedly give us the true ſenſe of them; and Mr. *S.* hath granted above, *p.* 46. that (not only in the time of theſe Compilers, but) *An.*400 the phraſe was *To offer Tithes*, and offerings were made then in that proportion: ſo that where *Oblationes*, only are mentioned as the whole Revenue of a Church, there *Decimæ* are the proportion of thoſe Oblations, yet we ſhall not take any advantage by the Compilers uſing the word *Decimas*, and are content that we can prove the ſenſe of theſe elder Councils to be *Tithes*, even when ſome other word is uſed to expreſs it.

(*w*) Concil. *Agath.* A. 506. Can. 8. *Bin.* Tom 2. par. 1. pag. 556.

But Mr. *S.* owns that the word is uſed in the Council of *Friuli*, *An.*791. where there is a long Canon to urge the payment of *Tithes* and *Firſt-fruits*, from Gods promiſes of Plenty, and of his bleſſing on them that obſerve it, and his Threatnings againſt the neglecters thereof (*x*). He grants this is a good Teſtimony of the Synods Opinion, but thinks it rather a declaration by doctrine then a Conſtitution by precept: To which I reply, That when a Synod declare their Opinion in a matter of Practice, they do it to oblige men to obey that declaration; and theſe Fathers tell us, they choſe to give this Rule rather in Gods words than their own, in hopes they would be more effectual.

(*x*) Concil. *Foro Julienſ.* Can. 14. *Bin.* Tom. 3. par. 1. §. 2. pag. 139.

§. V. This laſt Section (which is the *6th* in Mr. *S.*) is wholly ſpent in Cavils, and little Artifices to leſſen the former Teſtimonies; and what concerns the Council of *Maſcon*, is anſwered in its proper place before, and the reſt ſhall be now examined. Firſt, he objects, *Tithes are not named in any Old Collections of the Canons*, p. 65. beſides what is already ſaid to this, I now further reply, that we have the word *Decimæ* undoubtedly in thoſe Canons of *Maſcon*, *Hiſpalis*, and *Friuli*, which are juſtified for Authentic before. And divers Canons about the end of this 400 years, and the beginning of the next, do name *Tithes* as

being anciently ſetled on the Church (*y*), and Mr. *S.* himſelf obſerves *Decimæ antiquitus Conſtitutæ* in the Council of *Arles*, *An.*813. *pag.* 49, muſt needs imply *Tithes* ſetled in this 400 years; and *Hincmarus Rhemenſis*, *An.*850. ſaith, *Tithes were due to the Church by the holy Canons* (*z*), the thing it ſelf therefore is plain, whatever words be uſed in any of the old Compilers or Collectors. And whereas he would make us believe it was only the firmer and devouter Chriſtians then, who gave Tithes; I anſwer, No ſuch matter appears in any Teſtimony he hath brought; for that Exhortation written about the year 700 (cited by Mr. *S. p.*66.) declares he is no good Chriſtian that pays not his Tithes yearly: and the Epiſtle of *Boniface*, *An.* 750 implies, that it was a uſual thing to pay them, and ſo do all the forementioned Teſtimonies both for Opinion and Practice; indeed the Fathers and Councils both, do eſteem them extreamly wicked who do not pay them, which ſhews it was not only the beſt and firmeſt Chriſtians who paid them. Thirdly, He pretends they were ſometimes given to the Prieſts, ſometimes to Abbots, and ſometimes to the Poor, which is no more but that Tithes were given uſually to the Secular Clergy, and by ſpecial conſent of the Biſhop to the regular Clergy, and after their maintenance was deducted the Poor had the reſt, as is largely proved before. Fourthly, He ſuggeſts the Quantity was Arbitrary; but if ſo, then the Opinions of Fathers, and the Canons of Councils ſignified nothing, yea the Law of God, as then expounded, and the Practice of above 500 years continuance muſt be ſuppoſed of no force: I am ſure no other Proportion is named, and this is ſtrictly required; and if Mr. *S.* could have produced any Inſtances of variety in the proportion, he might have had ſome pretence for this falſe Aſſertion, but he produces not one inſtance of ſuch a kind; wherefore all that was arbitrary then, was to give more than a Tenth, as many did by voluntary oblations beſides; but who can imagine that this Age thought the Proportion arbitrary, when the Tenth was generally held to be due by Gods Law, and where that ſufficed not, it was ſtrictly

(*y*) Concil. *Pariſ.* An. 829. l. 1. c. 31. *Bin.* T. 3. par. 1. §. 2. pag. 289. *Mogunt.* 1. An. 813. c. 38, & 41. *Bin.* ib. p. 201. Concil. *Ticin.* An. 855. ibid. p. 400.

(*z*) *Hincmar. Rhemenſ.* Ep. 7. c. 35.

strictly enjoyned under the penalty of Excommunication, as we see in the Canon of *Mascon* cited above. Wherefore it is strange confidence in Mr. *S.* to affirm here, *That he only was compellable by Excommunication who offered not at all, not he who offered in a less quantity*: And for the place he cites out of *Photius* his *Nomo-Canon*, it is nothing to the case of Tithes, for *Photius* speaks of other voluntary Oblations, not of the fixed maintenance of the Clergy, *It was* (he saith) *forbid to Clergy-men under the penalty of* 10 l. *or deprivation to excommunicate any for not making these offerings* (*a*). And Mr. *S.* will not allow Tithes were paid at all in the Eastern Church, so that he most unjustly and impertinently cites this Eastern Law, to prove Men were not compellable by Excommunication to pay Tithes in the Western Church. And it is as little to the purpose which he is speaking of, to tell us that *Tithes* were a matter of special bounty in the *Ethiopic* Churches, and yet the Prayer he produces out of their old Liturgy confutes that pretence too; for public Prayers are rarely put into the forms of any Church unless for Cases ordinarily happening, and the Prayer it self calls *Tithes* and *First-fruits*, *Munera Ecclesiæ*, the Rewards of the Church, which implies a due, and if they gave them in sign of their gratitude to God, so do those also who pay Tithes ordinarily, as it is very likely these Christians did, from the clear practice of their neighbouring Churches in *Egypt*, cited out of *Isidore Peleusiota*, and *Cassian*, in the beginning of this Chapter, and I dare appeal to any, if this Prayer of the *Ethiopic* Liturgy do not well agree with usual payment of *Tithes* and *First-fruits* as the Rewards due to God and the Church. Fifthly, Mr. *S.* designs to make way for his *arbitrary Lay foundations*, by saying, that *by the practice of some places the Lay Patron might assign a part of these offerings to the Minister, and enjoy the rest at his pleasure* (*b*), which he would prove out of the Councils of *Bracara* and *Toledo*; but for the first of these, the Council of *Bracara*, the Canon indeed mentions a wicked practice of some places for Covetous Lay-men to build Churches on their Land for gain, that they may

(*a*) *Phot.* Nomocan. Tit. 6. (not 5. as Mr. *S.* mistakes.)

(*b*) Hist. *Tithes*, Chap. 5. p. 67.

share with the Priests in the Peoples oblations, but it charges no such thing be done any more, and forbids the Bishop (without whose consent no Church could have any right to take Offerings) ever to consecrate any such Church, or consent *to so abominable a design* (*c*). And will Mr. *S.* plead the abominable and condemned practices of notorious wicked Men shews any right of Lay-Patrons? That such things were done indeed is true, but that they might be done appears no otherwise than by the Canons condemning them; by which way of arguing Mr. *S.* may prove, that we might kill, fornicate, consult with Wizards, commit Rapes, or do any other ill things, for all these also are forbid by Canons; and yet this fallacy of arguing Right, from those very Testimonies which condemn any evil practice is every where obvious in Mr. *S.* But as for this Canon of *Bracara*, it makes very little to his purpose if such a Custom could be proved thence, because it implies the Lay-founder had no right to any Oblations, but it was the Bishops consecration alone which annexed the right of them to the Church, and if he refused to consecrate it, there could no Oblations belong to it. And his next Quotation out of the Ninth Council of *Toledo*, manifestly shews the Founder had no right at all to the Church Revenues, for it Appoints, *That the Founder or his heirs shall complain to the Bishop, or the King, if the Church Revenues be ill managed by the Incumbent*; but withal saith, *That these Heirs must not pretend these things are their own, or that they can exercise any power over them in their own right* (*d*), which evidently proves the contrary to that for which Mr. *S.* brings it, and plainly shews that *Lay Patrons might not dispose of Church Revenues.* And though Mr. *S.* (which too often needlesly fills his Margen) be pleased but to quote one Canon of this time, which puts Church Revenues into the Bishops power (*e*), he might have produced very many more to the same purpose, since all Canons agree in this point (*f*): And not only these, but all the old Canons also had strictly forbidden the Laity to meddle with the Church Revenues (*g*). So that if any Lay Patron did sacrilegiously seize

(*c*) Concil. *Bracar.* 2. Can. 6. An. 572. *Bin.* Tom. 2. par. 2. p. 235.

(*d*) Concil 9. *Tolet.* cap. 1. An. 655. *Bin.* Tom. 2. p. 2. pag. 514.

(*e*) Concil. *Aurel.* 1. c. 13. ap. *Seld.* p. 67.

(*f*) Concil. *Arauf.* c. 10. An. 441. Concil. *Ilerd.* c. 3. An. 525. *Aurel.* 4. cap. 7. An. 547. *Tolet.* 3. c. 19. An. 589. *Tol.* 4. c. 32, 34. An. 643.

(*g*) Can. Apost. Can. 37, 40. Concil. *Gangrens.* Can. 7, 8. Concil. *Antioc.* Cap. 11. 24, 25 *Agathens.* Can. 48. *Aurel.* 1. Can. 16

ſeize on the Revenues of any Church, it was not by any right he had thereto, but contrary to Law, Reaſon, and Religion alſo. Laſtly Mr. *S.* here ſaith, he had never ſeen any Law mentioning *Tithes* in the Eaſtern Church, and *pag.*245. he affirms there was no certain proportion there determined, but they were chiefly maintained by the καθοντες. To which I reply, that from the Teſtimony of *Origen*, *Epiphanius*, S.*Chryſoſtom*, *Iſidore*, and others, it is plain that anciently the *Tenth* was determined even in the Eaſtern Church, to be the leaſt proportion of the Chriſtian Oblations; and if this were the effect of leaving the quantity undetermined by Law (as Mr. *S.* intimates) that their Prieſts had no certain maintenance, then we may ſee the inconvenience of leaving the Miniſters maintenance to arbitrary Devotion, and may perceive that the Weſtern Emperors and Biſhops ſhewed more piety and prudence too, in making both Secular and Eccleſiaſtical Laws for the payment of a Tenth. And yet it is very probable that there was an uſe of paying Tithes alſo in the Eaſtern Church, for Pope *Innocent* the Third affirms Tithes were paid in his time at *Conſtantinople* (*h*); and *Humbertus* aſſerts, that the Greek Prieſts had both *Tithes* and *Firſt-fruits* in his days (*i*); and before him, *Anaſtaſius* a Greek Abbot ſaith expreſly, *The Lay-men are wont to give Tithes to the Prieſts* (*k*); *Theophylact* ſpeaks of a *Tithing*, and of a *Tribute unjuſtly extorted out of it from the Church* (*l*); and in the ſame Epiſtle it appears, the Emperors Officers were obliged to give the Clergy an account in writing of Laymens Eſtates, which no doubt was with reſpect to the dues they were to require of them: and theſe dues are called *the Firſt-fruits due from the Laity*, and the very καθοντες mentioned in Mr.*S.* *were to be required of the People according to the proportion of their Eſtates, and paid to the Reverend Prieſts, as the Golden Bull of* Iſaacus Comnenus *decrees* (*n*); which is really no other than *Tithes*, though in the Eaſt it was called of old, *Firſt-fruits*, and of later times *the Canonical due*; for it ſeems to be a fixed proportion, becauſe it was (as Tithe is) greater or leſs, according to

(*h*) *Innocent.* decret. l. 1. p.83.
(*i*) *Humb.* Cardinal. An. 1050 contr. Græcor. calumn.
(*k*) *Anaſtaſ.* Abbas, An. 850. libr. cont. Judæos.
(*l*) *Theophilac.* Ep. 41. ap. Bib. Patrum, Tom. 15. p. 263, 264.
(*m*) *Nichol.* Gram. ſentent. Synod. Jur. Græc. Rom. p. 269.
(*n*) Ibid. p. 121, & 123.

to Mens Eſtates; and if for want of an exact knowledge of Lay-mens Eſtates that Church took what Men gave in *Balſomon*'s time, yet it is very likely that the due was the old proportion of a Tenth at leaſt: and Mr. *S.* in his Manuſcript Anſwer to Doctor *Tildeſly* ſaith, *I ſaid no Laws there do mention Tithes——but for payment there I have expreſly affirmed it.* We therefore conclude, that there was payment of Tithes in the Eaſt, and both payment and Laws for it Civil and Eccleſiaſtical in the Weſtern Church, before the end of this Period.

CHAP. VI.

The Practice of Tithes from the year 800, *until the year* 1200.

§. I. THe Teſtimonies for Practice and Opinion are now ſo many, and ſo clear, that they admit of no evaſion; for which cauſe Mr. *S.* hath paſſed them over very briefly, as he hath done alſo the Hiſtory of the Canons and Laws for due Payment, to make room for his new device of Arbitrary Conſecrations; yet firſt for the Practice he grants, *That not only from Devotion, but through Eccleſiaſtic Cenſure alſo, aided with Secular Power, about the very beginning of this* 400 *years many Churches of the Weſtern Empire had Tithes paid as a duty* (*o*). And though he might have found an hundred plain proofs of this, yet he (who deſigns to pick out thoſe Evidences that ſeem the ſlighteſt) chooſes to inſtance in an Epiſtle of *Alcuinus*, written to perſwade *Charlemain, not to impoſe the yoke of* Tithes *on the newly converted* Huns *and* Saxons, *ſo as to force every Family to a full payment of them* (*p*); but he wilfully conceals

(*o*) Hiſt. *Tithes*, Chap. 6. p. 70.

(*p*) Epiſt. *Alcuin.* ad Car. Magn. An. 797.

conceals, that the Emperor did not follow this advice, "For the King having imposed on them the yoke of Christ (saith *Krantzius*) "left this order in the Province, That the "People should be excused from Tribute, but should re-"main obliged to the Churches and Bishops by the Law of "Tithes (*q*). And another Historian saith, "Being now "conquered and converted too, both Rich and Poor were "by Law obliged to pay to our Lord and Saviour Jesus "Christ, and to his Priests, the Tithe of all their Cattel, "Fruits, Tillage, and of all that they had (*r*). And surely if Mr. *S.* had been impartial, he should rather have related the Emperors Practice than private Advice, which took no effect; yet from *Alcuinus* Epistle we may infer, That if *Charlemain* so strictly imposed the Laws for Tithes on his New Conquests, he would not relax these Laws in his own Country, where Opinion and ancient Custom had setled Tithes long before his Civil Laws for Tithes were made. So that it is both improbable and untrue which Mr. *S.* (to make way for his arbitrary Consecrations) affirms, *viz. That the execution of those Laws soon after failed, and this practice of payment became to be of rare use* (*s*). To confute which, we might here bring innumerable Evidences of the due payment of Tithes in the *French* Empire, but that we shall have occasion to mention them as we go along; at present therefore we will only note, that Mr. *S.* himself in his Review, cites *Hincmarus* and *Rabanus Maurus* in the Margen, but doth not transcribe the passages which indeed overthrow this false Assertion, for *Hincmarus* saith, *Ausoldus, a Bishop of that time, forbid Prayers to be said in a Chappel, till the People of that Town paid their Tithes to the Priest, according to the Ancient custom* (*t*). And the Century Writers mention an Oath which was wont to be taken in *Rabanus Maurus* his time by the Laity, to prove they had duly paid Tithes (*u*); to which we might add, that *Alcuinus* judged it a Sin fit to be confessed by a Penitent, if he had omitted to pay Tithes, as was shewed before: But we need not multiply Testimonies in so clear a case, nor question the payment where Christianity was setled

(*q*) *Krantz.* Metrop. l. 1. cap. 8.

(*r*) *Helmold.* histor. *Sclav.* lib. 1. c. 3. ita etiam *Adam Bremens.* hist. Eccles. l. 1. c. 9.

(*s*) Hist. *Tithes*, Chap. 6. p. 71.

(*t*) *Hincmar.* 55. Capit. ad *Laudun.* cap. 2.

(*u*) Cent. *Magdeburg.* Cent. 9. cap. 7.

ſetled ſince in New converted Countries they were ſetled after the Example of the *French* Empire, of which one Example here may ſuffice, "*Mieceſlaus*, firſt Chriſtian King "of *Poland*, erected Biſhopricks, and by a perpetual De- "cree endowed them with Tithes of all kind of Fruits "of his own and his Nobilities Lands, ſo that the Laity "ſhould carry them after Harveſt to the appointed place "——there were Prieſts alſo, who had Lands given them "by the King and rich Men, and certain Tithes aſſigned "them by the Biſhops (*w*). This model being after the *German* pattern, whence the Preachers of the Goſpel came, doth enough ſhew the practice of *Tithes* did continue there by virtue of the Canons and Imperial Laws for many years. But Mr. *S.* is ſo very large in his Arbitrary Conſecrations, which he hopes will undermine the right of Tithes, that we muſt not enlarge on this Subject.

(*w*) An. 963. *Cromer.* de reb. *Polon.* l. 3. *Johan. Hebart.* hiſt. *Polon.* l. 2. c. 1.

§. II. If we reflect upon the Opinions, the Canons, and Secular Laws of this Age concerning the Right of Tithes, it cannot but ſeem very ſtrange, that the Laity in deſpite of all theſe ſhould diſpoſe of their Tithes as they pleaſed, yet this is that which Mr. *S.* here undertakes to make out, but by Proofs ſo miſtaken, ſo weak, and ſo falſly alledged, that to examine the particulars is enough to confute this his new device of *Arbitrary Conſecration*. Firſt, He brings divers Phraſes out of ſome Councils about the beginning of this Period, which he fancies point at the uſe of ſuch Conſecrations, but we judge they diſprove them. *Firſt*, The Council of *Mentz* Decrees, "That if any man will be- "queath any thing of his propriety to ſome other place, "he ſhall not take away *Decimationem proventus priori Ec-* "*cleſiæ legitimè aſſignatam* (*x*). Where we ſee Tithes were by Biſhops ſo legally aſſigned to Pariſh Churches, that if a Lay-man would give any thing to a new erected Church, he could not give his Tithes which were ſetled by Law. *Secondly*, The Council of *Mentz*, *An.* 890, forbids Laymens retaining Tithes, "For the Prieſt who ſerves *in loco* "*ubi decimæ antiquitùs fuerint conſecratæ*, he only ſhall have them

(*x*) Concil. *Mogunt.* can. 16. qu. 1. c. 42.

them (*y*); which *Place* where Tithes were anciently consecrated, is meant of the Parish Church, to which Tithes were annexed by the Bishop at its first consecration; for the Bishop by the old Canons was to do this before he consecrated any Church, and he only was to set out Parishes and settle Tithes on the several Churches (*z*). *Thirdly*, The Second Council of *Mentz* mentions, *Decimæ quæ singulis dantur Ecclesiis* (*a*); but the meaning is not of Tithes given arbitrarily, but given according to Laws Civil and Ecclesiastical then in force, as the *Capitular* he cites here doth prove; and the old Law which he also mentions here, more fully expresses it by—*per justitiam dari debet* (*c*); and thereupon *Hincmarus Rhemensis* saith, *Enquiry must be made what is spared of the Tithes, which belong to the Church by the holy Canons* (*d*); yea Mr. *S.* himself saith, *By the Laws of this time every Rector should have enjoyed the Tithes where he administred the Sacraments*, pag. 72. which he proves by the fore-cited Decree of Pope *Leo* the Fourth, which saith, *That he and his Predecessors had ordained, That the People should fully pay Tithes only to their Baptismal Church* (*e*), and by the frequent Laws for it in the *Capitulars*; he might have proved it also by almost all the Councils of this Age: yet, as if all the Canons of Councils, Decrees of Popes, and Laws of Princes had been meer *Bruta fulmina*, he still says, *They were little obeyed*, but hath no other way to prove so improbable a fancy, than barely by saying so, and by bringing in the Laws that forbid taking *Tithes* from Churches, to which of right they belong, to make it out that Men did give Tithes to what Churches they pleased (*f*). I am sure this Law orders the Kings Officer to distrain for the Tithe so arbitrarily given from the Parish Church, and to force the Offender to restore the Tithe with its forfeiture; and therefore Mr. *S.* prays you (before he cites it) to believe it was not put in execution. I pray, why not? Surely for no other reason, but that if it were executed it spoils his project of *Arbitrary Consecration*. Surely he thinks the *French* Emperors very weak to make so many Laws, and never look to their execution, this would the way to have made their Persons and Laws both to be have been contemptible; but he grants a-

(*y*) Concil. *Metens.* c. 2. ap. *Bin.* T. 3. p. 2. pag. 16.

(*z*) Concil. *Bracar.* Can. 5, & 6. Concil. *Ticin.* An. 855. *Bin.* Tom. 3. p. 1. §. 2. p. 400. *Grat.* c. 16. q. 1. cap. *Plures hap.*

(*a*) Concil. *Mogunt.* 2. An. 847. C. 10. *Bin.* Tom. 3. p. 1. §. 2. pag. 374.

(*b*) *Capitul.* l. 5. cap. 46.

(*c*) Addit. ad *Capit.* 4. c. 73. & Leg. *Longob.* lib. 3. Tit. 3. cap. 7.

(*d*) *Hincmar. Rhem.* ep. 7. cap. 35.

(*e*) *Leo* 4. in c. 16 qu. 1. de Monachis, c. 45, 46.

(*f*) Addit. 4. ad *Capit.* c. 73.

bove, *pag.*70, that the Secular Arm did now aid the Church in forcing Men to pay Tithes; and here he confeſſes the Clergy were to be deprived if they preſumed to perſwade Strangers to come to their Churches, or to give them Tithes belonging to other Churches (*g*); and the Laity are ſtrictly forbidden to come into any but their own Pariſh Church, except in a Journey, or on occaſion of a Law-Suit (*h*). Surely the Parochial-right was well ſetled then, when the Clergy were ſo puniſhed for doing any thing againſt it, and the Laity ſo ſtrictly forbidden all that might tend to it. But at laſt he finds a complaint in *Italy*, that (*Quidam Laici*, is the word) *Some Lay-men did give away their Tithes to other Churches at their pleaſure* (*i*); and becauſe it is forbidden there, thence he infers, it was uſually practiced. I reply, That the Fact of *ſome Lay-men*, doth not imply uſual practice, much leſs any right, for ſome Lay-men committed Inceſt, Sodomy, &c. as we can infer from Canons forbidding them; but theſe were neither very uſually done, nor done at all by right. I am ſure this Canon ſaith, this diſpoſal of Tithes *is known to be altogether againſt the Law of God and the holy Canons.* And the Emperor *Lambertus* threatens, *ſeverely to puniſh all that in contempt of the Canons of Holy Fathers, and the Capitulars of his Progenitors, preſumed either to give or receive Tithes in this manner* (*k*). And before him one of the Popes had excommunicated both the Givers and Receivers (*l*). All which abundantly ſhews, that it could not be done very often, and whenſoever it was, it was condemned and puniſhed both by the Church and State, and therefore ſurely the Acts of wicked and Lawleſs men cannot prove that the Laity had any right to make Arbitrary Conſecrations, any more than the like facts of ſuch perſons can prove Simony, Bribery, or Perjury to be right, becauſe ſome have done theſe acts.

(*g*) *Capitul.* l. 7. c. 141.

(*h*) *Capit.* l. 1. cap. 143, & cap. 154. Concil. *Nannet.* cap. 1.

(*i*) Synod. *Ticin.* ap. *Bin.* Tom. 2. p. 2. pag. 400.

(*k*) Concil. *Mutin.* A. 898. ap. *Sigon.* regn. *Ital.* l. 6.

(*l*) *Johan.* 8. An. 872. ap. *Bin.* T. 3. p. 2. pag 1.

But we haſten to his Examples, by which he is very confident he ſhall prove theſe *Arbitrary Conſecrations*, though I doubt not to ſhew in every one of the particulars, that they do all either virtually or expreſly contain the Biſhops conſent, and are not arbitrary conſecrations of the Laity; but

But Aſſignations of ſome portions of Tithes by the Biſhops conſent to ſome particular Church or Monaſtery, and if this could not be done without the Biſhops leave, then it was no Arbitrary Conſecration.

It is ſomewhat ſtrange that Mr. *S.* his firſt inſtance of Arbitrary Conſecrations ſhould be of the *French* Princes, who made ſuch ſtrict Laws againſt them, and if the elder *Pipin*, *Charles Martel*, and *Caroloman*, Anceſtors of *Charles* the Great, did aſſign the Tithe of their Cuſtoms about *Utrecht* to that Cathedral, this is no good proof of Arbitrary conſecration of Parochial Tithes; for firſt the Tithes of Cuſtoms, as alſo of Wreck, Treaſure-trove, and Fiſhings, were not ordinary Tithes belonging to any Pariſh Church. Secondly, It is no more but an aſſignation to a Cathedral Church of ſuch Tithes within the Dioceſs as were not before ('tis likely) claimed by any Parochial Church. Thirdly, This Charter was made as the very words of it declare, "becauſe *Boniface* the Archbiſhop de-"ſired it, who as Guardian and Biſhop then preſided over "the Church of *Utrecht* (*m*). Which Sentence Mr. *S.* conceals, as ſhewing the Biſhops conſent, and ſufficiently manifeſting this was no Lay arbitrary conſecration.

(*m*) Vid. *Chart.* apud Miræum de Canon. cap. 20.

Secondly, *Gutha*'s Promiſe to the Biſhop of *Utrecht*, to endow a new built Church (which he gave to the Church of *Utrecht*) with the Tithes of four Villages (*n*), ſhews, that the Biſhop was to be made acquainted how the Laity diſpoſed of the Tithes in their Dioceſſes; and if *Gutha* could have done this arbitrarily, why did he apply himſelf to the Biſhop? Indeed the cuſtom of *Germany* was, That all the Tithes in the Dioceſs ſhould be given to the Biſhop, who diſtributed ſo much of them to the Country Clergy as he thought fit; and if this Cuſtom (as is very likely) then obtained at *Utrecht*, this may eaſily be diſcerned to be no more, but that uſual endowing of new Churches with Tithes, which the Builders were obliged to conſent to, before the Biſhop might be allowed to conſecrate the Church; but it was the Biſhops Act at conſecration that gave that particular Church a right to thoſe Tithes, not the Lay Mans Promiſe.

(*n*) Hiſt. *Tithes*, Chap. 6. p. 74.

Thirdly, If *Raginer* and *Rigimer*, two Dukes of *Lorrain*, did endow two Monasteries with *Decimas quas habebant*, *the Tithes that they had in two several Towns*, that phrase, *Which they had*, implies this was rather a restitution of some infeodate Tithes taken from the Church by *Charles Martel*, and given to these Princes, than any original Grant; and it is no wonder if the Bishops were ready to consent to Lay-mens giving back such Tithes either to Churches or to Monasteries, rather than keep them in their own Hands, however the Law at that time, and the Custom also, was, That these endowments of Monasteries should be made by the Bishop of the Dioceſs where the Tithes lay, in whom it was believed the right of all Tithes was originally vested, and by whose Act Tithes were then only judged to be legally conveyed, as the next Example would have fully shewed, if Mr. *S.* had fairly related it. For,

Fourthly, The Tithes given to the Monks of *Clugny* were only Tithes of their own demesn Lands, which were then called *Decimas indominicatas* (*o*); and these Tithes were not first given them by *Lewis* his Charter, *An.* 939; and after confirmed by succeeding Popes, as Mr. *S.* unjustly pretends (*p*), for the very words of this Charter of *Lewis* the Fourth are, *We confirm those Tithes, which by the Popes privilege and the Charters of Bishops, they have procured, and do hold and enjoy*; which doth evidently shew, that the Church-Men first gave these Tithes to the Monks, and *Lewis* only confirmed them afterward; and this manifests Mr. *S.* his integrity also, who cannot be excused for omitting this passage here, by saying, he did not see it, since he doth cite this very passage of the Charter afterwards (*q*), and there expressly tells us, it was only *Lewis* his Confirmation of what Bishops had given before; yet here he most disingenuously brings it for an Example of arbitrary Lay consecration. But nothing is plainer than that Bishops did in this Age actually grant those Tithes which Monasteries had, by Charters, having the very words of *Damus & concedimus*, as Mr. *S.* here confesses concerning *Adhemar* Bishop of *Xantoign*; nor was it done by one Bishop only, for

(*o*) *Spelman. Gloss.* p. 313.

(*p*) Hist. *Tithes*, Chap. 6. p. 75.

(*q*) Hist. *Tithes*, Chap. 6. p. 99.

for an Abbot of *Clugny*, who lived a little after, ſaith, *They had right to thoſe Churches with all their Revenues, which they juſtly, freely, and Canonically poſſeſſed, being beſtowed on them by the Biſhops, without any Mony given for them (r)*; which ſhews theſe Monks had no Tithes, but by Biſhops Grants. (r) *Petr. Clun.* l. 1. ep. 28.

Fifthly, The Abby of *Vendoſm*, founded (not as Mr. *S.* miſtakes, *An.* 1050, but) *An.* 1033 (*s*), was indeed endowed with Tithe of *Salt-pits*, which was no ordinary Tithe; and yet Mr. *S.* confeſſes that *Geoffry* of *Vendoſm* alledges the Grants of the Biſhop of *Xantoign*'s Predeceſſors, to juſtifie the right of his Monaſtery to them: and ſince the firſt Donation was by a Biſhop, I wonder how Mr. *S.* came to bring in this as an Example of Lay conſecrations. This was a Grant made by a Church-man, and confirmed by Pope *Urban*, *An.* 1088, (that is, 'tis likely almoſt as ſoon as theſe Tithes were firſt granted) as this ſame *Geoffry* of *Vendoſm* doth affirm in this very Epiſtle which Mr. *S.* cites (*t*). And within a ſhort time after, *viz.* *An.* 1120, Mr. *S.* confeſſes that it was generally believed in all *France* and *Italy*, that even Churches were obliged to pay Tithes to other Churches, if the one had Lands in the others Pariſh, ſo firmly then was the Parochial Right ſetled (*u*). Whence we may conclude, that his next inſtance of *Anſellus de Garlanda*'s Grants to his new Abby of *Gornay*, *An.* 1124, had the Biſhops conſent and confirmation, or otherwiſe they had not been valid either by the Law of the Time, or the Cuſtom of *Normandy*, where the Biſhops always gave leave to the founding and endowing of Abbies, of which there is an Example *An.* 1080 (*w*); and many other proofs in the ſecond Tome of the *Monaſticon*. Whence we may conclude, That the Confirmation of Pope *Innocent* the Third, of all the Tithes given to the Abby of *Holy Croſs*, and S. *Leoffrid* in *Normandy*, was grounded upon former Charters of Biſhops, this Bull of the Pope bearing date 100 year after the firſt Foundation, and it mentions expreſly the Grant of the Biſhop of *Eureux*, in whoſe Dioceſs this Abby was; and ſince the Canonical Rights of that Biſhop are reſerved in theſe Tithes, as the Bull mentions, we may

(*s*) *Sirmond.* not. ad Epiſt. *Goffrid. Vind.* l. 2. ep. 26.

(*t*) *Geofr. Vind.* l. 3. Ep. 41.

(*u*) Hiſt. *Tithes*, Chap. 6. p. 76.

(*w*) Epiſt. *Anſelm.* l. 2. ep. 14. in not. ibid. pag. 53.

may be ſure theſe Tithes were granted at firſt by the Biſhops conſent: Nor can we imagine this Pope *Innocent* would confirm ſo many arbitrary Lay Grants of Tithes, who ſaith, *No Lay-men can grant Tithes to others, becauſe they cannot rightly poſſeſs Tithes themſelves* (*x*). And indeed all the Popes Bulls do confirm only thoſe Tithes *which the Abbies did juſtly and Canonically poſſeſs.* Now according to the Canons no Abby juſtly poſſeſſed Tithes but by the Biſhops Grant; ſo that hitherto we have not one full or fair proof of any arbitrary Lay Conſecration.

(*x*) Decretal. Lib. 3. Tit. 30. c. 31. p. 1347.

Sixthly, But finally Mr. *S.* crouds into his Margen a heap of Examples of Arbitrary Conſecrations, as he pretends, whereas every one of them, being ſearched, do only ſhew Mr. *S.* his unjuſt dealing in concealing the Biſhops conſent, which is mentioned in every one of theſe Quotations. *Firſt*, That of *Galfridus*, *Vicecomes*, expreſly ſpeaks of the conſent of *Theodoric*, Biſhop of *Chartres* (*y*). *Secondly*, That of *William* Earl of *Nivers*, ſaith, *Hugo Nivernenſis Epiſcopus procuravit, & Ivo Carnotenſis confirmavit* (*z*). *Thirdly*, That of *Adelardus* hath theſe words, *Ego Rainaldus Andegavorum Epiſcopus donum quod* Adelardus —*per manum noſtram Sancto* Albino *de decimâ portus caſtelli ſui fecit* —*confirmavi* (*a*). *Fourthly*, That of *Godfry* of *Bulloign* mentions *Burchard* Biſhop of *Cambray*, declaring, *That the Donor intreated it might be confirmed by the Authority of his Decree* (*b*). *Fifthly*, The laſt Decree of Pope *Innocent* was only a confirmation of what the Archbiſhop of the Province had by his Charter granted before, *Sicut* (ſaith he) *in ejuſdem Archiepiſcopi Authentico plenius continetur, confirmamus* (*c*). So that every one of theſe directly deſtroy his falſe Opinion of *Lay Arbitrary Conſecrations*, nor can we imagine Mr. *S.* would gave produced them here, but that he hoped his Reader would take them on his word, without ever ſearching the places.

(*y*) *Andr. Querc. tan.* not. ad Bibl. *Cluniac.* pag. 75.

(*z*) Ibid. p. 174.

(*a*) *Sirmond.* Not. ad *Goſfrid. Vindoc.* pag. 95.

(*b*) *Miræus* de Canonicis, cap. 91.

(*c*) *Innocent.* 3. decret. Ep. l. 1. pag. 160.

He proceeds to hook in all paſſages that might give any colour to theſe pretended Arbitrary Conſecrations, of which he explains that Arbitrary diſpoſition of Tithes to the Poor, about the year 1200 (*d*), condemned (he ſaith) by

(*d*) Hiſt. *Tithes*, Chap. 6. p. 78.

by Pope *Innocent* the Third. But if it were poor Monks to whom theſe Tithes were given, why ſhould this Pope condemn the practice, ſince he produces the ſame Pope in the very laſt Page, *viz.* 77, as confirming ſuch Grants to the Monaſteries; wherefore though it be true that *Paupres* be ſometimes put for *Monks*, yet here it ſignifies *the ordinary Poor*, who are plainly meant as well in the Sermon he cites, as in the Epiſtles (*e*), and Decretals of the ſame Pope (*f*). And in all theſe places the practice is condemned, though it be there intimated to be occaſioned by the uncharitableneſs of the Clergy, which moved ſome Lay-men to give part of their Tithes immediately to the Poor, whom the Clergy ſo much neglected, and therein did an act of Injuſtice under pretence of Charity, as thoſe Decretals declare: So that this doth not ſhew any right of diſpoſition of Tithes in Lay-men originally, but an illegal act of ſome few, grounded on the Clergies Male-adminiſtration.

(*e*) *Innoc.* decret. Ep. l. 2. pag. 483.

(*f*) Decretal. l. 3. Tit. 30. c. 26. p. 1340.

The Practice of thoſe Biſhops, who claimed (not Predial, but) Perſonal Tithes of a Family after its removal into another Dioceſs (*g*), ſhews, that not only continual payment of many years, but the Doctrine of the Fathers, and the Laws of God and Men, had now ſo ſetled Tithes, that they muſt be paid to ſome Church or other; and this being only a Queſtion which Church had right to theſe Tithes, and a diſpute between two Biſhops about the diſtribution of them, is nothing at all to Lay-mens arbitrary giving them, but rather ſuppoſes the Clergy were to determine to what Church men ſhould pay; and the Pope here blames the Biſhop from whoſe Dioceſs the Family was removed for claiming Perſonal Tithes (*h*): and ſoon after another Pope expreſly determines the matter, *viz.* *That predial Tithes ſhall be paid to the Church in whoſe Pariſh the Land lies, and perſonal to that in whoſe Pariſh the man dwells* (*i*). Yea, and the Decretal Epiſtle here cited ſays nothing of any Arbitrary Conſecration, but expreſly ſaith, *Their Anceſtors had paid Tithes to their own Biſhop or Prieſt in former times*, which implies an Ancient right and due.

(*g*) Hiſt. *Tithes*, Chap. 6. p. 79.

(*h*) *Innoc.* decret. Ep. l. 1. pag. 83.

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(*i*) Decret. l. 3. Tit. 29. cap. 5. pag. 1323.

Laſtly,

Lastly, He would infer *Arbitrary Consecrations* from the Phrase *Redimere decimas*, used in the Capitulars and Canons about the beginning of this Period. As if the Laity, who forced the Clergy to redeem Tithes had acted fairly, and only sold their own right; but I reply, That wherever this Phrase is used, the Laity who did force the Clergy to redeem Tithes, are condemned as wicked and unjust Persons for this Act, and he confesses here, that *Hincmarus Rhemensis* affirmed, *That the most profligate Lay-men in his Parish durst not presume to take mony for his Tithes* (*k*). Yea, the Emperor, in the *Capitular* cited by Mr. *S.* orders his Officer to force such Men to pay their Tithe freely (*l*); and can any man infer a right from so exploded a practice? Indeed the very word *Redimere*, shews that Tithes were the Clergies own before, or else it would rather be said, they *bought them*, than *redeemed them*; for as S. *Anselme* ingeniously notes upon God's redeeming our Souls, that they were his before, *For we are said to buy that which was anothers, but to redeem our own* (*m*); if therefore some Lay-men were so unjust, as to force the Clergy to redeem that which was their own; this neither proves the Laity had any right to Tithes, nor yet that the Clergy had none. *Ivo* tells us, that some Lay-men forced the Priests to redeem the very Oblations of the Altar (*n*); but no man will say they belonged to the Laity. But finally, Mr. *S.* confesses, that *Hales*, by *Tithes redeemed*, means only feudal Tithes, which were first taken from the Church; and no doubt the Clergy would retrieve these on any Terms from Lay-possessors, and if this be the sense, it is still less to his arbitrary Lay Consecrations, which now I hope we have fully disproved.

(*k*) *Flodoard.* hist. *Rhem.* l. 3. cap. 25.

(*l*) *Capitul.* l. 5. c. 46.

(*m*) *Anselm.* in Tit. cap 2.

(*n*) *Ivo Carnot.* Epist. 12.

§. III. *Appropriations* are next considered; for explaining whereof he falls into a tedious discourse about the Ancient way of filling Churches with Incumbents, running back as far as to the Councils of *Neocæsarea*, *An.* 315, and *Antioch*, *An.* 341, to find the Original of Parish Priests, whom he rightly calls Curates to the Bishop, for in him was

was veſted both the maintenance, and care of governing all the Country Churches in his Dioceſs, as was proved before out of the old Canons (*o*); and though every one of theſe Country Prieſts had his certain proportion of the Profits, yet it was aſſigned by the Biſhop, who both choſe the *Oeconomus* and took in his Accounts (*p*). He confeſſes alſo that the Biſhop put in all Incumbents, and diſtributed the whole Revenue (according to the Canons) for the firſt 500 years, and we have proved Tithes were paid to the Church long before that time; whence it appears that Lay-men of old had nothing to do with the diſpoſal of Churches, and if they had any ſuch Power afterwards, it muſt begin either by Uſurpation or Grant from the Clergy. But Mr. *S.* is miſtaken in ſaying, that Lay-men began to put in Incumbents almoſt as ſoon as they began to build Churches, and that theſe Incumbents received the Profits without any Admiſſion from the Biſhop (*q*). For it is certain, Lay-men began to build Churches long before the year 500, yet ſo long he confeſſes the Revenues were diſtributed by the Diſpoſition of the *Hierarchy*. The firſt Couneil of *Aurange* mentions Lay-mens building Churches, and forbids any but the Biſhop of the Dioceſs to dedicate them (*r*); and *Sidonius* mentions one *Simplicius*, a young Knight, who builded a Church in the Dioceſs of *Bourges* before the year 470 (*s*). And the power of chooſing was long before taken from the People (*t*), and put into the Biſhop to prevent Factions, and if any Lay-founder did put in any Incumbent, it was contrary to the Law and Cuſtom of this Age, wherein a Council decrees, *That the Lords of the Manner ſhould not put ſtrange Clerks into the Churches againſt the Biſhops will, to whom this priviledge in his own Dioceſs doth belong; and that none be put in, but ſuch as the Biſhop approves, and commands to officiate there* (*u*). About the ſame time alſo the Emperor *Juſtinian* enacted, *That the Patron might preſent a Perſon to the Biſhop, who was thought worthy by the Biſhop, and allowed by the Canons; otherwiſe the Biſhop might reject him, and ordain a fitter Man* (*w*); which Orders were renewed in ſucceeding Councils (*x*). And though the

(*o*) Chap. 5. §. 5

(*p*) *Iſid. Peleuſ.* l. 2. ep. 127.

(*q*) Hiſt. *Tithes*, Chap. 6. p. 83.

(*r*) Concil. *Araus.* 1. Can. 10. An. 441. *Bin.* T. 1. p. 2. pag. 499.

(*s*) *Sidon. Apol.* l. 7. ep. 9.

(*t*) Concil. *Laodicen.* Can. 13.

(*u*) Concil. *Aurel.* 4. Can. 7. An. 545. *Bin.* Tom. 2. p. 2. pag. 35.

(*w*) *Juſtin.* Novel. p. 123.

(*x*) Concil. *Cabil.* An. 658. Concil. 9. *Tolet.* Can. 2.

Bishops did connive at these Recommendations from Lay Founders to encourage the building of Churches, yet as soon as it was perceived, that from thence some Patrons began to pretend a right in disposing of the Revenues, that Practice was condemned (*y*). And to prevent this, *both the Imperial Laws and Church Canons in the East, forbid the building Churches in any Dioceſs, without the Bishops leave*, as *Theophylact* relates (*z*). So that *if* (as Mr. *S.* speaks, *p.* 81.) *we may conjecture the use of the time, by what Laws and Canons ordain*; even after Lay-men built Churches by the leave of Bishops, they had nothing at all to do with the Revenue, nor did they till after the year 500 so much as present Incumbents for the Bishops approbation.

(*y*) Concil. 3. *Tolet.* Can. 19. An. 598. *Bin.* Tom. 2. p. 2. pag. 282.

(*z*) *Theophyl.* Ep. 27. ap. *Bibl.* patr. Tom. 15. p. 257.

Mr. *S.* indeed pretends, that *for all these Canons divers Lay Patrons had, or at least challenged an interest in the Profits of the Churches they built* (*a*); which he would prove by those Canons of *Bracara* and *Toledo*, which he produced, and we examined before, *Chap.* 5. §. 6. yet here (according to his custom of repeating every thing twice or thrice, that seems to make against the Churches right) he brings them on the stage again; but we refer the Reader thither for the confutation of this pretence, where it doth appear that the Canon of *Bracara* supposes such a vile thing had been sometimes done by connivance perhaps of the Bishop, but utterly condemns it, and forbids the Bishops consent to so wicked a practice; and the Canon of *Toledo* evidently declares the Patron and his Heirs had no right to Church Revenues, nor remedy for the abuse of them by the Incumbent, but by Complaint first to the Bishop, and then to the King; both which do disprove his Assertion. But he brings a strange proof of Lay-Founders challenging a right in the Profits of the Church, out of an Epistle attributed to Pope *Damasus*, *An.* 380, where he saith, this is titled *An old Custom*; to which I reply the words are only *Hanc consuetudinem*, that is, the Decree saith, it was an ill Custom of that time (not for Lay-Founders surely, who Mr. *S.* saith, began not to build Churches till *An.* 500, but) for some of the Laity sacrilegiously to seize (by violence, and

(*a*) Hist. *Tithes*, Chap. 6. p. 84.

and not by any pretence of right) upon the Church Revenues; which practice is there condemned, but it is nothing to Mr. *S.* his purpoſe. And yet if it were, ſince this is only a Decree attributed to *Damaſus* by *Ivo* and *Gratian* (whoſe Collections he elſewhere ſo much undervalues)(*b*), there is no reaſon he ſhould be allow'd to urge it here for a genuine Decree.

(*b*) *Bin.* Tom. 1. p. 1. pag. 512.

Another proof of Lay-mens challenging a right to diſpoſe of the Endowments and Offerings of thoſe Churches whereof they were Patrons, is, *That divers times proviſion is made againſt it in the Capitulars*; but he wiſely cites no particular place, and indeed there is none that provides againſt their challenging Offerings, and for other Endowments, though ſome very ill Men againſt all right did Sacrilegiouſly ſeize of them toward the end of this Period; yet it was an Uſurpation, and was remedied by thoſe many Canons which condemned and forbid it (*c*). And indeed the Patron could not without great injuſtice pretend any right to any of theſe Profits, becauſe before the Biſhop conſecrated any new erected Church, the Founder did firſt by a Writing under his hand ſolemnly ſettle theſe Endowments and Profits on the Church, which, with the ſubjection of the Church to the Biſhop, were delivered into his hand before the Conſecration (*d*); ſo that to challenge a propriety in theſe afterwards was like the Sin of *Annanias* and *Saphira*. As for the other intereſt, which was that of collating Clerks into Livings, and giving them Poſſeſſion without any aid from the Biſhop, *which* (Mr. *S.* ſaith) *could hardly be gotten from the Lay Patrons, though ſome Imperials were provided againſt it* (*e*). I reply, the Imperial which he cites (*f*), it is the very words of the Third Council at *Toledo*, *An.* 598, and ſaith not one word of collating Clerks into any Livings, but condemns thoſe Founders of Churches, who denied the Endowments were to be diſpoſed by the Biſhop. And though there were in all Ages ſome who would not be governed by Laws, and ſo perhaps ſome ſuch lawleſs Perſons might place Incumbents in their Livings without the Biſhop; yet it is certain the Laws of that time highly condemns this (*g*), and the Emperor calls

(*c*) Concil. *Valent.* can. 9. Concil. *Wormat.* can. 6. Concil. *Colon.* can. 4. *Mogunt.* An. 888. can. 4. *Capit.* l. 7. cap. 368.

(*d*) Concil. *Bracar.* 2. can. 5. An. 570. *Greg. Mag.* Ep. l. 12. c. 10. Concil. 4. *Aurel.* can. 33.

(*e*) Hiſt. *Tithes*, Chap. 6. p. 85.

(*f*) *Capit.* l. 7. cap. 213.

(*g*) Concil. *Arelat.* ſub *Car.* M. can. 4. *Turon.* can. 15. *Cabilon* can. 42. *Mogunt* ca. 29. *Meldenſ.* c. 51. *Wormat.* can. 6.

(h) Leg. *Carol.* M. edit. *Vit.* p. 311.

(i) *Capit.* l. 5. cap. 178. Concil. *Pariſ.* An. 829.

(k) Vit. S. *Valdrici* ap. *Seld.* Hiſt. Tithes, Chap. 6. p. 86.

(l) *Hincmar.* Dial. de ſtat. Eccleſ. pag. 65.

(m) *Petr. Damian.* l. 1. Ep. 13. ad *Alexand.* 2.

it *no mean preſumption*, and *a piece of moſt wicked boldneſs* (h); and it is plain the Biſhop then had the ancient liberty of refuſing any Clerk nominated by a Lay-Patron, if he gave a reaſon for it (i): and ſince Mr. *S.* confeſſes no Lay-man could make a building to be a Church without the Biſhops conſecration, and no conſecration could then be made by a Biſhop till he had firſt received the Subjection of that Church; thence it follows, that the Collation as well as the Endowment were put into the Biſhops Power, and could not be made without his conſent: which is very plain from the inſtance he brings to prove the Lay-Patrons right; for *Ulric*, Biſhop of *Auſpurg*, *An.* 950, *having finiſhed the Conſecration, and taken livery of the Endowment, he commended the procuration of the Altar to the Prieſt he had approved there, and commended the Advowſion of the Church to the Founders heir, by putting on him a Robe* (k); where we ſee the Biſhop approved the Presbyter, and that the very Patron received his right of Advowſion from the Biſhop, who therefore doubtleſs would not give away his ancient right of approving or rejecting the Clerk nominated. And indeed *Hincmarus* alſo aſſures us that the Church at firſt did chooſe theſe Patrons to their office, *The Holy Church* (ſaith he) *by its ſacred Biſhops, chooſeth to it ſelf in every Church, Vice-Maſters, Advocates, or Defenſors* (l); and therefore they did no doubt reſerve to themſelves their old priviledge of approving all Collations. And ſince the very right of Patronage was firſt derived from the Church, it is very unreaſonable in Mr. *S.* to ſuppoſe, that Patrons reſerved any ſuch liberty to collate without the Biſhop, when as the very power they had to Nominate, was from the favour of the Church to encourage the building of Churches. I grant *P. Damianus* doth mention ſome Lay-men in his time who uſurped this power of Collation, and delivered their Churches to an Incumbent with this phraſe, *Accipe Eccleſiam*; but this ſame Author in the ſame Epiſtle thus expreſſes this Act, *Licet injuſtè aliquo modo Eccleſias futuris Rectoribus tradunt* (m), intimating that it is unjuſt in Lay-men after any faſhion thus to collate, and that the Incum-

Incumbents ſo collated were not yet Rectors of the Church till the Biſhop had confirmed the Collation, which was of the ſame nature with our modern Inſtitution, though it were not called by the ſame Name; and for his Quotation out of *Ivo*, it ſpeaks of the Kings inveſting a Biſhop choſen by the Clergy, which indeed did give the Biſhop ſeiſin of the Temporalities of his Biſhopric; but this doth not at all prove, that Lay-Patrons gave any ſuch inveſtiture to Pariſh Prieſts of their own chooſing, without the Biſhops conſent firſt had. Nor doth the phraſe of *Commendatio Eccleſiæ* ſignifie any ſuch matter in any of his Marginal Quotations here produced (*n*). The firſt place only forbidding Lay-men to take bribes for the commendation of a Church to any Prieſt (*o*), and the very next *Capitular* before prohibits Lay-mens putting in or caſting out Prieſts without the Biſhops conſent (*p*). The ſecond Quotation hath not ſo much as the word *Commendatio*, nor any thing to that purpoſe (*q*): And the third is poſitive proof againſt Mr. *S.* ſaying, *The Patron ſhall commend what Prieſt he likes to officiate there, but with the Biſhops conſent, leſt he be evil* (*r*); and *Luitprandus* adds, —— *ſo that the ſaid Prieſt ſhall obediently apply himſelf to the Biſhops good pleaſure* (*s*); whence it is plain that *Commendatio Eccleſiæ* did ſuppoſe the Biſhops conſent, and was not (as Mr. *S.* falſly expounds it) *The Livery of a Church and the Endowments, to the Incumbent, to take care and diſpoſe of, as a Uſufructuary of what the Patron was the Proprietary, or as a Tenant of that whereof he was in reverſion:* there being no ground from Antiquity or Reaſon for any ſuch pretended Propriety in the Patron. And indeed it is an odd Propriety which a man hath to a thing, that he can neither take to his own uſe, nor give to another without the conſent of a Third perſon; and a ſtrange kind of Tenancy, when the Leſſor muſt receive no acknowledgment, nor retains any power to put the Leſſee out of poſſeſſion in any caſe whatſoever. Yet ſo ſtrangely doth Mr. *S.* dote upon this Opinion that he fancies every thing he meets with ſounds that way, or elſe he would never have attempted to prove the Biſhop had nothing to do with

(*n*) Hiſt *Tithes*, Chap. 6. p 87.
(*o*) *Capit.* l. 5. c. 83.
(*p*) Ibid. c. 82.
(*q*) Addit. 4. c. 37.
(*r*) Synod. *Rom.* c. 16. q 7. c. 33.
(*s*) *Luitprand.* Monaſterium. vit. *Leon.* 4.

with the Endowments by a Canon of the Council of *Chalcedon*, which was made within that first 500 years, while, by his own confession, the Endowments were wholly in the disposal of the *Hierarchy*, p. 82; and the meaning of ordaining a Man without a Title then, implies only, that (though the Bishops then filled all Country Churches, yet) the Bishops could not put an Incumbent into a Church already full, and therefore if there were no Vacancy, he might not ordain any *Sine Titulo*: But if he did ordain any so, the very Law of Pope *Innocent*, here cited by Mr. *S.* declares the Orders were not void, but the Bishop should maintain him that was so Ordained till some Church became void (*t*); all which proves not, that the Bishop did not collate, but only that he had not alwaies Vacancies ready to bestow, which is nothing to Mr. *S.* his purpose. And whether the Patron chose a Person ordained, or not yet ordained, it is all one, since even *Duarenus* himself (whom Mr. *S.* here cites) saith, *The Patron hath no right at all to administer the goods of the Church, and consequently cannot give such power to another meerly by his own Act* (*u*). The truth is, that though originally the disposition of Churches was wholly in the Bishops, yet they had so far receded from their own right, as to allow the Patron a power of Nomination; so that now neither could the Bishop without the Patron, nor the Patron without the Bishop dispose of a Church with its Endowment, but the Bishop had the advantage, because he had power in some cases to reject the Clerk, and he did the last act toward giving Possession, which shews how little ground there is to pretend the Patron had any propriety in the Endowments of Churches. Nor was there any such use, as Mr. *S.* pretends, of Clerks resigning at pleasure into the Patrons hand (*w*), for the *Capitulars* he cites to prove this, do not so much as name any Resignation at all, much less any resignation to the Patron; only they forbid Priests to leave their Churches without the Bishops consent, and punish those who did so, with Excommunication (*x*); and good reason, for they had made a Promise to the Bishop at their Ordination, or

(*t*) Decretal. l. 3. tit. 5. c. 16. pag. 1128.

(*u*) *Duarenus* de Minister. lib. 5. cap. 4.

(*w*) Hist. *Tithes* Chap. 6. p. 89.

(*x*) *Capit.* lib. 6. cap. 197. & l. 7. cap. 173.

or Admission, not to leave them (*y*), and so were not only forbid to leave these Churches, but also to take any New ones without the Bishops consent (*z*). Wherefore unless all the prohibitions of good Laws be a proof that the practice prohibited was right before those Laws, these are no evidences, that Patrons had a right to dispose of Churches without the Bishops consent; suppose it do imply there was some Patrons and Priests so lawless as to do such things, these Mens facts prove no right at all. But Mr. *S.* saith, *These Laws were little obeyed*; for which we have only his bare word, and (besides that he cannot bring one instance where they were disobeyed, and the party was not punished) it is very unlikely that so many Laws, with so severe penalties annexed, should be meer Scare-crows, and never put in execution. But he thinks it proves the Patron had a propriety in the Profits, because *if an Advowson descended in Coparcenary, the Church had as many Incumbents as the Parceners had parts, as in other Inheritances.* I answer, If this were so, it only shews, that the right of Nomination was divided among the Patrons heirs; but indeed it only appears, some would have had it to be thus divided, but the Laws did not allow it, as his own Quotations sufficiently prove. The first of which declares, *It is unfit that one Altar should have divers Priests, and orders the Bishop to forbid Divine Service to be said there, till the Coheirs agree to present one only* (*a*), which was also enacted by many other Laws of that time (*b*). His second Quotation expresly affirms, *All these Clerks were presented to the Bishop* (*c*), (which quite overthrows his notion of Propriety), and yet it condemns the practice, *because one Church can have but one Rector.* His third Quotation also saith, *The Bishop invested the Incumbent*, (which according to Mr. *S.* p. 86. is giving him seisin of the profits) but hath nothing of a Church descending to heirs in Coparcenary. But the case is this, *A certain Ladies first husband had presented a Clerk to a Church upon her Inheritance, and the Bishop had approved and admitted him; but upon her divorce and second Marriage, the second husband would have presented another Clerk, on pretence the first husbands*

(*y*) *Capit.* lib. 5. cap. 108.
(*z*) Ibid. cap. 43, and 82.

(*a*) Addit. 3. cap. 25.
(*b*) Leg. *Longob.* l. 3. tit. 1. c. 44. Concil. *Tribur.* c. 32. Concil. *Cabil.* c. 26.
(*c*) Concil. *Lat.* sub *Alex.* 3. Can. 17.

bands preſentation was void, becauſe the Marriage was declared null; but the Decree confirms the firſt Husbands preſentation, as having been allowed by the Biſhop(*d*); which wonderfully confirms the Biſhops Power then in ſuch diſpoſals, and confutes all the pretence of Propriety in Patrons. As for thoſe *Droits honorifiques de Signieurs d'Egliſes*, of the Patrons reſerving ſome part of the Profits to himſelf, and leaving only a ſmall part to the Incumbent; if there be any ſuch in *France* among Lay-Patrons, they are moſt likely to have ſprung from the old *Infeodations* there. But he tells us, this cuſtome is where the Patron is a Spiritual perſon, which is no proof that Lay-Patrons had like power, and yet even this very cuſtom in the places he cites to prove it, is condemned as wicked and unjuſt (*e*), and declared, that all ſuch reſervations are void without the Biſhops conſent, if the Patrons were Lay-men (*f*); and for the Vicars in the Churches of Monks, it was in the Biſhops power by the Canons, to force the Monks to allow him a competent Portion.

(*d*) Addit. ad Concil. *Later.* par. 15 cap. 7. *Bin.* Tom. 3. par. 2. p. 602.

(*e*) Decretal. l. 3. tit. 5. c. 30. pag. 1150. Et extrav. l. 6. tit. *de Præbend.* c. ſuſcepti.

(*f*) Decret. l. 3. tit. 38. c. 23. pag. 1451.

That the *Biſhops* did diſpoſe of the Church Revenues as they thought fit in the Primitive times, is confeſſed by him, and proved by us before; but we ſhall not infer thence, that in theſe middle Times Biſhops did diſpoſe of Tithes ſo arbitrarily as of old, though if we ſhould affirm that, there is better proof of it by far, than of his arbitrary diſpoſal of Tithes by Lay-men; yea, Mr. *S.* himſelf hath clearer and firmer proofs of Biſhops arbitrary diſpoſing of Tithes in thoſe middle Times, *pag.* 100, and *p.* 101, than all his Book affords for the Laity. 'Tis certain, by his own confeſſion, there were Laws for the Biſhops ſo to diſpoſe of Tithes, it being decreed according to the moſt ancient Canons, *That all Tithes ſhould be diſpoſed of by the Biſhop or his Deputy* (*g*); and, *That all Tithes were to be in the Biſhops power* (*h*); but no ſuch Laws were for his pretended propriety of Lay-men. And though he ſpeak ſo contemptibly of theſe Canons, as if no practice followed, yet he himſelf grants, that in *Germany* generally the Biſhops had the Tithes of their whole Dioceſſes, and aſſigned what portions

(*g*) Synod. ſub *Joan.* 9. A. 904. ap. *Bin.* Tom. 3. p. 2. pag. 137.

(*h*) Concil. *Auguſtan.* A. 952. ap. *Bin.* Tom. 3. p. 2. pag. 152.

portions of them to the Incumbents they pleaſed. And in other Countries where Pariſhes were ſetled, the Tithes may juſtly be ſaid to be diſpoſed of by the Biſhop, becauſe it was Biſhops who divided Pariſhes, conſecrated Churches, and received and ratified their Endowments, Biſhops gave the Patrons priviledge of Nomination, and confirmed the party nominated to enjoy them, if he liked of him; it was Biſhops alſo that reſerved the third or fourth part of Parochial Tithes to their own uſe, as an acknowledgment of their ancient right to the whole Tithes; ſo that we may juſtly ſay, that even where Pariſhes were ſetled alſo, Tithes were diſpoſed of as the Biſhops pleaſed, and according to the Laws and Canons they had made for that diſpoſal; which utterly deſtroys his fancy of Lay-mens right to diſpoſe of Churches.

The Inveſtiture of Biſhops and the more eminent Abbots by Emperors and Kings, who anciently were (and always ſhould have been) ſupream Ordinaries in their Dominions, was upon the account of ſeveral Honours and Temporal priviledges (not due to them by Gods Law, as Tithes, but) given them by the extraordinary bounty of theſe Princes, and therefore it is needleſs to diſpute that matter here; only as to Pariſh Churches it is plain, that if at any time ſome great and lawleſs Lay-men had given them by inveſtiture without the Biſhops conſent, it was a uſurpation upon Epiſcopal right; and if the growing greatneſs of the Clergy cauſed it to be taken away, the Clergy therein did but reaſſume their ancient rights, as that Council at *Rome* (cited here) (*i*) declares, which ſaith, this practice of the Laity was *contrary to the Statutes of the Holy Fathers* (*k*). And that which he cites next, *viz.* the Council *Lateran*, relates only to Pariſh Churches, and is no more but a confirmation of the old Canons and Imperials, *viz. That no Prieſt ſhould take a Church with Tithes from a Lay-man by meer inveſtiture* (*l*). I do not ſay that this was never done, but I affirm, that it is certain ſuch diſpoſal of Churches was always illegal and unjuſt, and I can ſcarce believe it was done often, becauſe though the Church Laws could not

(*i*) Hiſt. *Tithes*, Chap. 6. p. 91.
(*k*) Concil. *Rom.* ſub *Greg.* 7. An. 1078.
(*l*) Concil. *Lat. Calixt.* 2. An. 1119, &c.

rule the great Lay-men, or hinder them from giving Churches; yet they would awe the Clergy, who were to be excommunicated for accepting them, and to forfeit both their former Living and this alſo, which was ſo unjuſtly procured (*m*); wherefore he very erroneouſly ſaith, the courſe of Inſtitution upon Preſentations ſucceeded this of inveſtiture, ſince it cannot be proved that ever inveſtiture of Pariſh Churches was of common uſe, and the Biſhops power of approving or rejecting the Clerk nominated by the Patron (which anſwers to our Inſtitution) was as old as *Juſtinian* at leaſt (as is proved before) and therefore far older than the pretended practice of Inveſtitures. And the very Quotations which Mr. *S.* produces here (*n*) to juſtifie his Opinion, do rather prove ours, *viz.* That Inveſtitures were a uſurpation upon the ancienter rights of Biſhops. The firſt plainly ſaith, that Inveſtitures were new encroachments upon the Biſhops power *by the boldneſs of ſome Lay-men* (*o*). The ſecond ſhews, that Lay-Patrons often repented of their Inveſtitures, and preſenting others canonically to the Biſhop, declared their former act to be void (*p*). The third ſuſpends the Receiver *ab officio & beneficio* (*q*). The fourth calls it an evil cuſtom of one Province, and declaring it contrary to the Rules of the Holy Fathers, excommunicates the Receivers (*r*). The laſt only adds, that worthy Perſons be put in the room of thoſe ſo deprived upon preſentations to the Biſhop (*s*). And indeed this was the ancient courſe, only where it was altered in ſome few places by the injuſtice of ſome great Men, new Laws were made to reſtore the right and ancient uſe. And thus we have (as briefly as could be) diſproved all theſe pretended Evidences of Lay-mens right to diſpoſe of Tithes, which he hath laboured ſo earneſtly for, in hopes to build his arbitrary Appropriations on this bottom, which being now taken away the Superſtructure will more eaſily fall.

(*m*) Concil. *Nannetenſ.* Can. 16. ap. *Bin.* Tom. 3. par. 2. pag. 133.

(*n*) Hiſt. *Tithes*, Chap. 6. p. 93.

(*o*) Conc. *Later. Alex.* 3. Can. 9. & 14. *Bin.* T. 3. p. 2. pag. 558. & Decretal. l. 3. Tit. 38. c. 4. p. 1438.

(*p*) Decret. lib. c. 10. p. 1443.

(*q*) Ibid. c. 21. p. 1449.

(*r*) Ibid. l. 3. Tit. 7. cap. 3. p. 1161.

(*s*) Ibid. l. 3. Tit. 5. cap. 31. pag. 1150.

After this tedious circumference Mr. *S.* at laſt comes to *Appropriations*, whereby indeed not only the Patronage, but the Glebe and Tithe alſo, of ſome Churches, were conveyed

Hiſt. *Tithes*, Chap. 6. p. 94.

veyed to Monasteries; but not (as he pretends) by the sole act of Lay-Patrons, for since we have proved they had no propriety in the Endowment, their single act could not settle it in a Monastery; and if they could not present once without the Bishops consent, much less could they convey it for ever: and Mr. *S.* grants, that the Monasteries which had such appropriate Churches, always presented their Clerks to the Bishop for Institution, as the Canons required, and indeed as the Patron had done before the Appropriation. 'Tis true, the Abbies (looking on themselves as part of the Clergy) did put in Incumbents under the name of Vicars, allowing them but a small part of the profits, while the greatest part of them were reserved to themselves; but this was so notorious a corruption, that *Johan. Sartsburiensis* complains greatly of it *(t)*. And that Age did so fully believe the Bishops interest in all disposal of Tithes, that it was not permitted to Monasteries to allow these Vicars what maintenance they pleased, but the Bishops then had power to give the Vicar such part of the profits as he thought to be fit and competent, as is learnedly and fully proved by Dr. *Ryves*, in his excellent Tract called *The Poor Vicars Plea*, where Mr. *S.* his pretence of the Vicars maintenance being wholly in the will of the Monastery, is so clearly confuted, that I refer the Reader thither; where he may be abundantly satisfied, that no Monastery had any Appropriate Church *Tam pleno jure* so arbitrarily setled in them, but the Bishop had still a power to order them in the disposal of their Tithes: and therefore in that very Bull of Pope *Lucius* the Second, confirming the Appropriate Churches to *Kenilworth* (cited by Mr. *S.* pag. 79) they are granted on these Conditions, First, that their Vicars be presented to the Bishop to be Instituted; Secondly, and that he remain under the Bishops Jurisdiction; Thirdly, that they gave this Vicar a sufficient allowance, which conditions quite overthrow the Monks arbitrary Power in their Appropriate Churches,: and let it be further noted, that the Founders Charter which gives them these Churches is signed by two Bishops, *An.* 1125.

(t) *Sarish.* de nugis Curial. l. 7. cap. 17.

and the confirmation thereof by K. *Henry* ſoon after, is ſigned by his Archbiſhops and Biſhops (*u*); ſo that theſe Appropriations were made at firſt by the conſent of Biſhops. But Mr. *S.* obſerves (*w*), *That Lay-men ſometimes made Appropriations, reſerving the Patronage to themſelves; but then their Preſentations were accounted to be only to the Vicariges, which had Salaries annexed at the pleaſure of the Monaſtery on whom the Church was ſetled in Appropriation.* To which I reply, No Lay-man alone could make an Appropriation, and if they did reſerve the Patronage, it was by the Biſhops conſent: But it may be asked, what the Patron had to do with giving *Eccleſiam cum decimis*, ſince we affirm he had no propriety in the Tithes; and ſome may think, if his Patronage were reſerved, there was nothing elſe in him properly to give. I reply, It was only the Patronage of the Vicarige which he reſerved, as Mr. *S.* here grants: And ſince he was Guardian of the Church, and ſo obliged to ſee the profits diſpoſed of to the fitteſt Clerks, when the Monks had perſwaded Lay-Patrons, that they were the devouteſt ſort of the Clergy, it was requiſite the Patron ſhould by his Charter declare his deſire and conſent, that ſuch a Church ſhould with its profits be ſetled in ſuch a Monaſtery; but whatever the words of that Charter were, I ſhall prove preſently (and in the *Engliſh* practice) that the Biſhop only made the Church appropriate, and as an Evidence of his ancient right in the diſpoſal of Tithes, and of his conſent to all Appropriations, the Forms do generally run with this Exception, *Salvis nobis & ſucceſſoribus noſtris jure & Authoritate Pontificiali* (*x*), or as Mr. *S.* his inſtance of the Abby of S. *Germans* hath it, *pag.* 99. *Salvâ Dioceſani Canonicâ juſtitiâ*; which ſhews that Lay-Patrons had no arbitrary power in this matter.

But ſince Mr. *S.* cannot deny theſe Charters of Biſhops in the Appropriating of Churches, he pretends, *They were only Confirmations got by the Monks to ſatisfie the Canons, not to give validity to the Grant in ſecular and Common Law* (*y*); whereas there was no Secular or Common Law at all then in uſe which took cognizance of this buſineſs, and the

(*u*) Monaſtic. *Angl.* Tom. 2. p. 114.

(*w*) Hiſt. *Tithes* Chap. 6. p. 98.

(*x*) Monaſt. *Angl.* T. 2. p. 208.

(*y*) Hiſt. *Tithes*, Chap. 6. p. 99.

the very inſtance which he brings to prove the Biſhops Charters came afterwards, plainly ſhews it was thoſe very Charters which gave Monks a right to appropriated Churches; for this Charter of King *Lewis* is confeſſed by himſelf to have been only a Confirmation of Appropriate Churches and Tithes, which the Monks of *Clugny had gotten, held and poſſeſſed* (they are the very words of this Charter of King *Lewis*) *by the Popes Priviledges, and the Biſhops Charters.* Whence it is evident that the Monks firſt procured the Appropriations, by Grants from the Biſhops, and Bulls from the Pope, by virtue of which they held them, only to prevent any oppoſition from the Secular Power they deſired the Royal confirmation afterward: And when I come to the *Engliſh* practice, I ſhall undeniably prove by innumerable Inſtances, That the Biſhops Charters were always had to the firſt Grant of the Patron, and without them no Lay-man could appropriate any Church, of which this may ſuffice for a proof at preſent, That the Lay-Patron did requeſt the Biſhop to appropriate a Church given to the Monks. So *Roger*, Biſhop of *Worceſter*, *An.* 1170, having ſeen the Charter of *Manaſſer Biſet*, who gave, as Patron, the Church of *Kerderminſter* to the Nunnery of *Bradley*, and the confirmation of King *Henry* the Second; He, *at the requeſt of the ſaid King, and of the Patron, doth confirm their Grant, and ordain it ſhall be appropriate to them* (*z*). Further proof of this alſo Mr. *S.* himſelf gives us in the next pages (*a*), where *Biſhops* alone do convey Tithes of other Mens Lands to Monaſteries, and he inſtances in *Athelbero*, Biſhop of *Hamburgh*, *An.* 1141, and his Succeſſors. And ſince no example can be produced where Lay-men alone made any ſuch conveyance, we may thence conclude the Biſhops Act was the main thing in all Appropriations. 'Tis true, theſe *German* Biſhops (as Mr. *S.* largely proves) had in them from the beginning of Chriſtianity there, the ſole right of Tithes through their whole Dioceſs, becauſe Biſhopricks were ſetled long before Pariſh Churches in that Country. But this alters not the caſe, becauſe Biſhopricks were ſetled in all Countries before Pariſh Churches, and the Biſhops had every

(*z*) Monaſt. *Angl.* Tom. 2. P. 409.

(*a*) Hiſt. *Tithes*, Chap. 6. p. 100, &c.

every where of old the ſole right of Tithes in them, and though in ſome Countries the Biſhops had conſented to the Lay-Patrons power of Nomination and Preſenting, and ſo there they could not ſo arbitrarily diſpoſe of Pariſh Tithes to Monaſteries, as the *German* Biſhops could, yet ſtill even in thoſe Countries the Biſhops were to allow and confirm all Grants of Churches and Tithes made by Lay-Patrons to Monaſteries for perpetuity, as well as to Incumbents for life; and if the Biſhops were Patrons themſelves, they could arbitrarily diſpoſe of them to Monaſteries without any Lay-mans conſent, which Lay-Patrons could not do: ſo that in other Countries, as well as in *Germany*, the Biſhops had more power in this matter than any Laymen had. And in *Germany*, even after Pariſhes were ſetled, the Biſhops ſeem to have been Patrons of all thoſe Pariſhes out of which they gave Tithes, and upon that ground *Athelbero* gave ſo many Pariſh Churches to the Monks, Mr. *S.* p. 103. But I ſee no ground to believe, either *that Tithes were paid more juſtly in ſome of thoſe Northern Churches than in other places*; or, *that in other Countries we ſhall find arbitrary Conſecrations by Lay-men, continued until An.* 1200 (*b*): For as to the latter of theſe, Mr. *S.* hath not yet produced one arbitrary Lay-Conſecration in any Country; and as to the former, we ſee no reaſon to doubt but Tithes were well paid every where in this Age, yet if theſe Northern Countries paid them ſo much better than others, it ſeems ſtrange why Mr. *S.* ſhould only hunt about for Examples, that they paid them unwillingly, and counted them a burden; yet if the more Barbarous of theſe Nations did deſpiſe the Laws of God and Man, and the cuſtom of all Chriſtendom beſides, that will be no Precedent for others, and it is evident from the Hiſtorians here cited, that this People were as hardly brought to believe the Goſpel as to pay Tithes, yet as they received the one ſo by degrees they ſubmitted to the other. And theſe very Examples, which Mr. *S.* picked out on purpoſe to ſhew ſome People counted Tithes a burden, do expreſly declare, that paying of Tithes was, *according to the cuſtom and example of all Churches, eſpecially of thoſe near them, and that it was a duty by Gods Law.*

(*b*) Hiſt. *Tithes*, Chap. 6. p. 104.

S. p.

S. p. 104, 105, which ſhews, the Perſons were rude and barbarous who had this ill opinion of Tithes, and not to be imitated by any ſober Chriſtians.

And indeed in more civilized Countries now, there was no reaſon to complain of the detaining Tithes, but of the ill diſpoſal of them in taking them from the Pariſh Rectors, and giving them to Monaſteries about the end of this 400 years, in great and frequent Conſecrations and Appropriations, but all made by the conſent of Biſhops and Popes, who having been generally bred in Monaſteries, did retain ſo partial a kindneſs for the Monks, that the Biſhops encouraged the Laity to give them Churches with Tithes, and were always ready to confirm ſuch Grants, whereby Tithes were taken away from the Pariſh Rectors, to whom they had hitherto belonged, and ſetled by the Biſhop on the Monks; which being ſo contrary to the Ancient practice, and ſo great a hindrance to the due performance of Divine Adminiſtrations in remote Country Churches, was much complained of by the beſt Authors of this time, *viz.* *Ivo Carnotenſis*, *Hugo Pontiniacenſis*, *Stephanus Tornacenſis*, *Petrus Bleſenſis*, *Petrus de Alliaco*, and *Petrus Abelardus*, who (though himſelf a Monk) ſaith expreſly, *Thoſe things which belong to the Parochial Clergy we uſurp to our ſelves, and by any kind of means we get to our ſelves from the Biſhops the Revenues of Pariſhes, as well in Tithes as Oblations* (*c*); and *Sarisburienſis* blames the Popes and Biſhops for theſe Grants (*d*); for Monks of old were required to pay Tithes of that Land which they tilled with their own hands (*e*): And the Founder of the *Ciſtercian* Order diſcerning this to be a duty, when he would reform the practice of Monks, *perſwaded his Diſciples, according to the letter of S.* Benedict's *Rule, to live of their hand-labour, and leave Tithes and Oblations to the Clergy that ſerve in the Dioceſs* (*f*). But afterwards theſe *Ciſtercians*, as well as other Monks, got all the Tithes they could procure, yet not without the Biſhops conſent, as *Turſtan*, Archbiſhop of *York* witneſſes of them, in his Letter to *S. Bernard*; *As to the profits of Churches and Tithes (for taking poſſeſſion of which the Monks have been thought very blame-worthy) they will not receive any but by the Cano-*

Hiſt. *Tithes*, Ch. 6. p. 106, &c.

(*c*) *P. Abelard.* Serm. in natal. S. *Joh. Baptiſt.*

(*d*) *Sarisbur.* de nugis Curial. l. 7. c. 21.

(*e*) Privileg. Formoſ. Monaſter. *Gigniacen.* An. 896. ap. *Baluz. Miſcel.* Tom. 2. p. 160.

Decreral. l. 3. Tit. 30. c. 3, 4. p. 1326, 1327.

(*f*) MSS. Bibl. *Bodlcian.* ap. Monaſticon, Tom. 2. p. 947.

Canonical Order of the Biſhop (*g*). Yet we muſt do the Biſhops of that Age right, ſo far as to excuſe them on this ground, that they did not take ſuch Grants to be alienations of Tithes from the Clergy, but only a taking of Tithes from an ignorant and ſcandalous ſort of Clergymen (as Seculars were then reputed) to give them to the regular Clergy, whom they judged to be more holy in their lives, and whoſe Prayers and other divine Adminiſtrations they thought more effectual: ſo that I wonder Mr. *S.* ſhould affirm ſo evident an untruth, *viz. That the Covents poſſeſſing theſe, were not pretended to be any part of that Clergy which made up the Evangelical Prieſthood*, p. 106. when himſelf elſewhere contradicts this and ſaith, *Religious perſons were alwaies of the Popes ſides and reckoned in the Catalogue of the Clergy* (*h*). Nor could he be ignorant, that the Popes and others, who favoured and pleaded for giving Tithes to Monks, expreſly call them *Levites*, and reckon them among the Clergy (*i*), and thence juſtifie their right to them. *Since the religious* (ſaith *Hales*) *are reckoned in the order and office of Levites they may receive Tithes* (*k*); yea, in the very Epiſtle cited by Mr. *S. pag.* 107. *Peter*, Abbot of *Clugny*, in anſwer to thoſe who objected the Monks could not have Tithes which belonged to the Clergy; the Abbot ſaith, *If the Tribe of* Levi *had Tithes granted, then the Monks alſo may rightly have them granted* (*l*). And it is well known divers of them were in Orders, and did ſupply by Turns their Appropriate Cures themſelves, and adminiſter Sacraments there, and where the diſtance permitted not that, they found Vicars who were Prieſts in Orders, and allowed by the Biſhops, who did miniſter all Sacraments to the People; which I do not alledge to juſtifie the Biſhops of that Age, as free from all blame in confirming ſuch Grants, but only to ſhew what grounds they went upon in theſe Acts: which doth abundantly manifeſt, that neither Lay-Patrons or Biſhops did at all believe Tithes could be alienated from the Clergy, or that ſetling Tithes on a body of regular Clergy, was any ſuch kind of alienation, which is the thing Mr. *S.* would gladly have us to believe. As for the Nuns, it is plain they paid Tithes of old, and we ſee their

(*g*) Extat. Monaſt. Tom. 1. p. 736.

(*h*) Hiſt. Tithes, Chap. 6. p. 119.

(*i*) Append. ad Concil. *Later.* p. 13. cap. 3 *Bin.* T. 3. p. 2. p. 598.

(*k*) *Alex. Halenſ.* p. 3. qu 5. m. 6. art. 2.

(*l*) *Pet. Cluniac.* l. 1. ep. 28.

their Founders bound them *to pay Tithes both greater and leſs out of their goods to the Pariſh Church, as other Pariſhioners were wont to do* (*m*); but when the Monks practice of ſupplying Cures by Vicars had obtained, then the Nuns not only got the Biſhops and Pope to free them from paying Pariſh Tithes (*n*), but alſo to give them Appropriate Churches, which they could ſupply by Vicars as well as the Monks, though this practice was not very frequent.

(*m*) Chart. *Hugonis de Vtr.* Monaſticon. T. 1. p. 1021.

(*n*) Monaſt. ib.

But Mr. *S.* proceeds (*o*) to inform us, that the Abbot of *Hersfielt* juſtified his claim to Appropriate Churches againſt the challenge of the Biſhop of *Halberſtadt*, *An.* 1059, which might well enough be, ſince this Abby was very anciently endowed with Tithes, for the Emperor *Otho* the Second gave Lands in exchange for ſome Tithes, of which this Abby was poſſeſſed *An.* 972 (*p*); and ſince Mr. *S.* grants, the whole Tithes of the Dioceſs were from the beginning of Chriſtianity in theſe *German* Biſhops, no doubt the Tithes and Churches they had were given them by this Biſhops Predeceſſors; yea, the ſame Hiſtorian out of whom Mr. *S.* cites this Hiſtory, ſaith, that in the Council of *Erpesford* (called on this occaſion) the Abbots of *Hersfielt* and of *Fulda* pleaded the Popes Bulls, and the Charters of this very Biſhops Predeceſſors for the Tithes they enjoyed (*q*). So that it was a hard thing after 100 years peaceable poſſeſſion, for this Biſhop to endeavour to take them away by his great Authority with the Emperor, and to force the *Thuringians* to pay them to the Biſhops Officers, whereas their Forefathers had always paid them to the Monks; and that was the *Legitima Patrum ſuorum*, which theſe *Thuringians* contended for, not (as Mr. *S.* falſly pretends) a right to detain their Tithes, or arbitrarily to diſpoſe of them, but only a right of paying them to ſuch Monks, as their Fathers by the Biſhops Order had been wont to pay them; and therefore *Lambertus* ſaith, that the *Thuringians* had the ſame cauſe with the Abbots of *Fulda* and *Hersfielt*, *viz.* concerning the right of Abbies, to receive Tithes anciently paid to them, and they all intended to appeal to the Pope about this, which the *Thuringians* would not have

(*o*) Hiſt. *Tithes*, Ch. 6. p. 108.

(*p*) Lib. de zelo Vet. Princip. *German.* Bibl. patrum, T. 15. p. 736.

(*q*) *Lamb. Sbaſnaburg.* ap. *Bin.* Tom. 3. p. 2. pag. 252.

done, if the right they claimed had been (as Mr. *S.* pretends) a right of detaining Tithes, since they could not hope to be encouraged by the Pope in so impious a custom: so that we conclude the *Thuringians* rights were, the liberty of paying Tithe to such Abbies as their Fathers had paid them to by Bishops assignation; and they counted it so unjust an exaction for the Bishops Officer to take them, that they broke out into a War upon it, *and afterward* (saith the Historian) *there was no more any exaction of Tithes in Turingia*; that is, the Bishops Officer durst not take them any more; but it is like they paid them afterward to the Abby: for this Historian *Lambertus* (who so highly commends the *Thuringians*) was a Monk of *Hersfielt*, and a party in this cause, which makes him call the paying Tithes to the Bishop *Exactio decimarum*; but when they paid them to the Abby, as before, that he judged to be no exaction: and therefore when the Bishops Officer ceased to take Tithes, he saith, *Tithes were no more exacted there.* Wherefore neither this, nor any other proof yet alledged, doth make out any Arbitrary Power in Lay-men to consecrate or appropriate their Tithes, much less to detain them.

Hist. *Tithes*, Ca. 6. p. 111.

§. IV. *Infeodations* were conveyances of Tithes into Lay-hands made by Bishops, to encourage the Laity to defend the Church, and by them detained and claimed as their Right. 'Tis true, *P. Damian* remembers these, and complains of them to *Alexander* the Third; but Mr. *S.* himself saith, *pag.* 113. *He complains of the Bishops for it* (*r*); and if they came from the Church at first, then it will not serve Mr. *S.* his purpose at all, nor shew any Arbitrary power in Lay-men to detain their Tithes, or give them away to the Laity. As for the Original of Infeodations Mr. *S.* despises *Krantzius* extreamly *for ascribing it to the time of* Charles Martel, *or the Ages near him, since there is no mention of them for* 300 *years after him* (*s*), forgetting that himself produceth an instance of an Infeodation, *p.* 116. made by one of the Kings of *France*, *An.* 900, that is, within 150 years after *Martels* time: So that not only *Pasquier*, but Mr. *S.* also is mistaken in fixing the beginning of

(*r*) P. *Damian.* l. 4. Ep. 12.

(*s*) Hist. *Tithes*, Ch. 6. p. 112.

of them after the year 1000. 'Tis true, *P. Damian* who remembers them, died *An.*1085, and the Council of *Lateran* mentions them *An.* 1078; but if theſe had been the firſt mentioners of them, Mr. *S.* need not have been ſo ſevere on *Paſquier*, who would have them begin *An.*1090. But other Authors, as well as *Krantzius*, think Infeodations much elder, though it is not my concern to prove that, ſince the later ſuch a corrupt practice began, the leſs we need wonder at it. And if (as Mr. *S.* ſaith, *p.*114) the uſe of it ceaſed *An.*1180, then according to him it was not older than about 130 years, and ſo no wonder if ſo late and ſo corrupt a Cuſtom were eaſily rooted out. But whenever they began, it is more to our purpoſe to prove they came from the Church; and *Krantzius* ſaith, *When the Clergy could not be ſure their right would be ſufficiently defended by Lay-Princes, they gave part of the Tithe, into their hands, in the nature of a Fee or Benefice, chooſing rather to loſe the half than the whole* (*t*). And the ſame Author relates the paſſage concerning the Emperor *Frederic Barbaroſſa*, *An.*1186, (which Mr. *S.* cites out of *Goldaſtus*) (*u*), *That of old time, when the Pagans invaded the Church, the Nobility received Tithes from the Church, as a reward for defending it* (*w*). And if the Emperor pleaded that as a good Argument ſo anciently, we may thence infer, Firſt, that *Infeodations* were older than Mr. *S.* pretends; Secondly, that they firſt came from the Church, or elſe the Friends of Lay-inveſtiture had not pleaded it: and the Canon of that *Lateran* Council (which Mr. *S.* ſaith did firſt condemn *Infeodations*) *An.*1078, plainly intimates, that Lay-men had gotten them from Biſhops, or from Kings and others to whom the Biſhops had aſſigned them, and therefore they are commanded *to reſtore them to the Church* (*x*). Now we cannot properly be ſaid to *reſtore* a thing to any, but them that were once the right Owners, which implies they came firſt from the Church. And that other Canon of the *Lateran* Council, *An.*1180, (which Mr. *S.* ſaith prevented any new Infeodations from being made) *Forbids Lay-men, that detain Tithes with the hazard of their Souls, to transfer them any way to other Lay-men;*

(*t*) *Krantz.* Metrop. l. 1. c. 2.

(*u*) *Seld.* Review, p. 474.

(*w*) *Krantz.* Saxon. l. 6. c. 52.

(*x*) *Bin.* T. 3. p. 2. p. 400.

and if any receive them, and reſtore *them not to the Church,* (y)Decret. l.3. Tit.30.c.19. pag.1335. *he ſhall be deprived of Chriſtian burial* (*y*). Where we ſee the word alſo is *reddiderit*, and the giving them to the Church is called *Reſtoring*; but Mr. *S.* pretends *tradiderit*, is the truer reading. I Anſwer, That the *Decretal* reads it *reddiderit*, and ſo doth *Hoveden* (*z*), *Newbrigenſis* (*a*), and *Halenſis* (*b*), with all the reſt of the Commentators; yea, and the former Council of *Lateran*, cited above, had that very phraſe, whence we conclude this to be the truer Reading. And for the Senſe of this Canon it is moſt likely, that this Pope *Alexander* the Third deſigned to condemn all Feudal Tithes paſt as well as future, for his Predeceſſor *Gregory* the Seventh had condemned both ſorts befores as Mr. *S.* ſhews *pag.* 112. and his Succeſſor *Urban* the Second condemned paſt Infeodations, *ibid. pag.*113; yea, and Pope *Innocent* the Third ſo underſtood this Canon, as he confeſſes, *pag.* 139. Why then is it unlikely that *Alexander* the Third ſhould condemn old Infeodate Tithes? Mr. *S.* tells us indeed, this Canon did not prevail to take away old Infeodations, but only to prevent new ones, which might be, and yet the Popes deſign was higher, than (through the power of ſome great Lay-men) could be brought about. However we gain theſe two points, That all *Infeodations* were thought Sacrilegious and unjuſt in the detainers, and yet the firſt original of them was from the Church, as (Mr. *S.* confeſſes, *pag.* 178) the *French* Lawyers generally hold and believe; and therefore neither do theſe *Infeodations* ſhew any Arbitrary Power the Laity had in diſpoſing Tithes, excepting what they had from the Church.

(z)*Hoveden*, Annal.p.2. pag.335. (a)Hiſt.lib.3. cap.3. (b) *Halenſ.* qu.51. m.6. art.1.

He ſaith, *Perhaps ſome Old Infeodations were made by Lay-Patrons in the vacancy of their Churches* (*c*); which is a groundleſs conjecture, nor can he bring one clear inſtance of it, and though a Patron with a Biſhop may diſpoſe of the Endowment of a Church in the Vacancy, yet it will not follow from thence, that a Patron alone may in the Vacancy diſpoſe of the Endowment to another Lay-man for ever: Nor is there any one paſſage in *Fledoard*, or *P. Damian*,

(c)Hiſt. *Tithes*, Chap.6.p.115.

mian, that Lay-men without the Biſhops conſent made any ſuch *Infeodations*; and his Canon of *Innocent* the Second's *Lateran* Council, which orders, *They ſhall be reſtored from Lay-men to the Diſpoſition of the Biſhop*, doth imply they were in the Diſpoſal of the Biſhop firſt, and by him conferred on Lay-men. I grant indeed, that after Biſhops had once made Tithes infeodate, the Laity then, in after Conveyances, did without the Biſhops conſent give them arbitrarily; but we ſpeak of the firſt conveyance, not of the after derivations. But that grant of *Charles* King of *France* of the Chuch of *Egmond*, *Cum omnibus ad eam jure pertinentibus*, unto *Thierry* Earl of *Holland*, *An.*900, which Mr. *S.* here cites, *pag.*16. was not properly an Infeodation, but a Grant of a Church with its Endowments to be turned into an Abby; and if we judge of this Act by the uſe of the time, we may conclude the Biſhop conſented to this Grant, however we know the Biſhops had Infeodated many Churches to the *French* Princes, and they very often gave them back again to Monaſteries, as judging they had no good right to them. And Mr. *S.* confeſſes in the next page, *That Princes often joyned with Biſhops to bring in the payment of Tithes, that thereby themſelves might have beneficial Infeodations of them from the Church* (*d*). So that if Princes themſelves were beholding to Biſhops for Grants of *Infeodations*, we need not wonder how Princes came to have Churches and Tithes to give to Monaſteries; and we may be ſure if Kings could not make themſelve Infeodations without being beholding to the Biſhops, no private Layman could make his own Tithes Infeodate, as here Mr. *S.* affirms without one Inſtance to prove it. As for the Exempt Religious making *Infeodations* out of their own demeſns, confirmed and given to them by Popes and Biſhops; Firſt, It is but a ſecondary Conveyance, and yet even this practice is declared illegal, and the Grant to be null, in that very Decree of *Alexander* the Third, which he cites to ſhew there were ſuch Infeodations (*e*): So alſo his two Inſtances out of *Innocent* the Third were ſo evidently reputed illegal, that the firſt was reſigned (*f*), and the ſecond repealed

(*d*) Hiſt. *Tithes*, Ch. 6. p. 117.

(*e*) Extravag. l. 6. tit. *De Decimis*, cap. 2. §. Sane.

(*f*) *Innocen* 3. Epiſt. l. 3. p. 447.

pealed by Sentence (*g*). Indeed it doth hence appear ſome attempted to do ſuch Acts, but withal it is plain, the Law and uſe of the time made them utterly void. His Example of *Henry*, Count of *Ratzenburgh*, who had an Infeodation of Tithes from the Biſhop of *Oldenburgh* (*h*) is nothing to his purpoſe, becauſe derived from the Church: And *Hildeward*'s Infeodation reſigned to the Biſhop of *Hamburgh*, *An.* 1174, in all probability came alſo from the Church too, becauſe Mr. *S.* told us before, thoſe Biſhops of *Hamborough* had a Right to all their Tithes in their Dioceſs, and arbitrarily diſpoſed of them, *pag.* 100. The *Decretal* cited in the Margin, doth not imply there were many Examples for it, only ſaith, *Though it be a grievous thing, and worthy of Divine vengeance, that ſome Lay-men uſurp that which is the Prieſts right, yet it is moſt of all to be feared, becauſe they very often are encouraged in their Error by the Clergy, ſince ſome Prelates do indulge them to diſpoſe of Churches and Tithes, &c.* (*i*). The blame we ſee is chiefly laid on the Clergy, and the Sentence ſubjoyned is to deprive thoſe Prelates for ever. And good reaſon, for the Lay-men to whom the Biſhops gave theſe Tithes, ſpent them in luxury and exceſs, to the great ſcandal of Chriſtian People; and therefore no wonder if (as Mr. *S.* notes, *pag.* 118.) many of the Country People were by this Maleadminiſtration of the Biſhops diſcouraged from paying Tithes. But ſtill here is no proof of any *Infeodations*, but what came from the Biſhops, which no way helps Mr. *S.* his Opinion, nor are theſe any inſtances of Lay-mens Arbitrary detaining or diſpoſing Tithes. We cannot expect but in that Age (as well as in all others) there might be ſome refractory, covetous, and ſacrilegious Perſons; but the practice of ſuch being wicked, illegal and condemned, is no pattern for others, nor pretence that they had a right to detain their Tithes.

(*g*) Idem. ibid. pag. 482.

(*h*) *Krantz. Wandal. l.* 4. *c.* 38, 39.

(*i*) Decret. l. 3. Tit. 30. c. 17. pag. 1333.

§. V. The *Exemptions* granted by the Pope and Biſhops to ſome Religious Orders being ſo undeniably from the Church, and granted to ſuch as that Age did account among the

the Clergy, is nothing to Mr. *S.* his purpoſe. He ſuppoſes here that which he hath not proved, *viz. That Lay-men enjoyed a liberty in moſt places from the beginning of Chriſtianity till An.* 1200, *in not ſubjecting themſelves to the Laws of the Church for the payment of Tithes, and admitting Canons that touched their Eſtates, no further than they ſaw cauſe* (*k*). We have proved, no ſuch liberty was enjoyed by Lay-men, in any places that were civilized in this part of the world, and have ſhewed there were Laws of the State, as well as the Church, to oblige them; we have made it out that the Laity were ſubject both to theſe Laws and Canons, ſo that Tithes were now generally paid, and therefore there are more falſhoods than lines in this ſuppoſition: and all his inſtances concerning the Clergy, are only about one ſort of Clergy-mens paying, or not paying to another, which being no more but various methods of diſpoſing Tithes among the divers kinds of Clergy, or reputed Clergy; it doth not prove there was any Opinion, that Tithes ought not to be paid by the Laity. He tells us, *ſome Biſhops and Abbots prohibited their husbandmen to pay Tithes to their Pariſh Churches*: but this was upon ſuppoſition, the right of them belonged to themſelves as being of the Clergy; yet the Council of *Chalons* condemns this practice, and ſtrictly orders them, *that they ſhould make Tithes of thoſe Fields and Vineyards they poſſeſſed, for themſelves and their Brethrens ſtipends, to be paid to the Church, and that the Families on their Land ſhould pay Tithes to the Church where they had Sacraments and Prayers* (*l*). The Decree of Pope *Paſchal* forbids Clergy-men to pay Tithes to Clergy-men, and if Mr. *S.* expound it of Monks, then he grants they were accounted Clergy-men (*m*). Yet it ſeems Monks muſt have paid Tithes to Monks, if they had Lands in the Pariſh of a Church appropriate to another Abby, unleſs diſcharged by mutual conſent, as in that compoſition made by this Pope, between (not the *Templars*, as he miſtakes, but) the *Ciſtercians* and the *Præmonſtratenſes*, *An.* 1142; at which time Exemptions were not uſed, yet they began to be granted ſoon after, *viz. An.* 1150 (*n*), and were immediately

(*k*) Hiſt. *Tithes*, Ch. 6. p. 119.

(*l*) Concil. *Calchilon.* can. 19. *Bin.* T. 3. p. 1. §. 2. p. 193.

(*m*) Decreral. l. 3. Tit. 30. c. 2. pag. 1325.

(*n*) Idem ibid. c. 10. p. 1330.

diately complained of, as cenſured and very unjuſt by the Authors of that Age, *viz. Sariſburienſis* (*o*); and *Peter Bleſenſis* boldly ſaith, *Theſe Diſpenſations were Diſſipations* (*p*). And the Monks of *Clugny* renounced theſe Papal priviledges (*q*), as did alſo the *Ciſtercians* in their *Charta Charitatis*, made by *Stephen* their Third Abbot (*r*). So that the practice of *Exemptions* was held unjuſt by the beſt Men; and yet the continuance of Exemptions, notwithſtanding the injury to the Pariſh Rectors, and the many complaints amongſt them, ſhews how great a Power the ruling Clergy then had in the arbitrary diſpoſal of Tithes, when ſo unjuſt and unreaſonable practice was continued. But it is objected, *The Templars and Hoſpitallers were not of the miniſtring Clergy, yet they alſo had Tithes given them.* I Anſwer, They were accounted the Churches Souldiers, and ſince *no man goes to war at his own Charges*, they thought they might be paid out of Church Revenues, if the Biſhop and his Chapter agreed to it; eſpecially they might be given them in Charity, becauſe theſe Knights had renounced the World, and ſo were *Pauperes Voto* as well as the Monks, as Pope *Honorius* declares (*g*). Yet from this ill practice of the Pope, in exempting Monks and Orders of Spiritual Knights from paying Tithes, came all the Lay-uſurpations upon them ever ſince; and though the one be far more juſtifiable than the other, yet both deſerve to be condemned as contrary to the firſt end and deſign of Tithes.

(*o*) *Sariſb.* de nugis Curial. l. 7. c. 21. pag. 452.
(*p*) *Pet. Bleſenſ.* ep. 82.
(*q*) *Pet. Clun.* l. 1. ep. 33, 34.
(*r*) *Quercetan.* not. ad Bibl. *Cluniac.* p. 115.
(*g*) Concil. *Trecenſ.* can. 66. An. 1127. *Bin.* Tom. 3. p. 2. pag. 476.

§. VI. If Mr. *S.* had been as induſtrious to collect particular Opinions for the Divine right of Tithes, as he hath been to ſearch out for Inſtances of Arbitrary Conſecrations, this Section had been much larger; but however we have this general confeſſion from him, *That the Teſtimony of Councils in this Age, which ſpeaks of Tithes as due by God's Ordinance, are very frequent* (*h*). And that *Res dominicæ, Dominica ſubſtantia, & Dei cenſus, are the Attributes given to Tithes by the Ancients of this Age* (*i*); but he might as well have told us, that all did now hold Tithes to be due by the Law of God, for he can find but one Example of any that

(*h*) Hiſt. *Tithes*, Ch. 6. p. 122.
(*i*) Ibid. p. 123.

that opposed it, *viz.* one *Leutardus*, pag. 124, who was a Heretic in other points (as Mr. *S.* confesseth;) and the Historian out of whom he cites this instance, calls his Opinion about Tithes *a Doctrine not more base than damnable*, and adds, *That when he could get no Followers, he drowned himself* (*k*). But to assure us of the universal agreement in point of the Divine right of Tithes, not only the Council of *Mentz* saith, they are instituted by God, and due to him (*l*); but that of *Arles*, in the same year, expressly grounds them on Gods Law (*m*): That of *Chalons* in the same year excommunicates the Neglecters of this payment (*n*), and that of *Rhemes* then also decreed, *Tithes* should be fully paid (*o*). And to the same purpose speak all the Councils from the beginning of this 400 years (*p*), and the *Capitulars* which are taken out of them do in many places repeat the same thing (*q*). Mr. *S.* objects, *They ordinarily ground them on the Levitical Law.* I answer, Many of them do not mention that Law at all, and those which do, declare they did not esteem it ceremonial or abrogated, as far as concerned the payment of a Tenth. As for the Council of *Aquisgrane*, which he saith, cites the syllables of *Moses* for the right of Tithes, the Reader may note, that the passage which Mr. *Selden* points at, is no Canon of that Council, but a Book presented by the Bishops there to the Emperor, containing a collection of all passages in both Old and New Testament, relating to piety and bounty toward God's service, and *Abel*, *Abraham*, and *Jacob* are cited there, as well as *Moses* Law (*r*). Again, he saith some of these Councils styled them *Patrimonia pauperum, &c.* but this doth not take off the Clergies right to them, since the same Councils declare, that the Clergy ought to have the disposal of them, only (as all Christians, after their own necessities are supplied, ought to distribute what they can spare to the Poor, so) the Clergy were more especially obliged to give what was more than they needed to the Poor, and they were generally so bountiful to them, that the Poor had no other Patrimony or certain provision made for them in that Age, but the Clergies allowance of

(*k*) *Rodulph. Glaber.* l. 2. c. 11.
(*l*) Concil. *Mogunt.* cap. 38. An. 813. *Bin.* T. 3. p. 1. §. 2. pag. 201.
(*m*) Concil. 4. *Arelat.* can. 9. ibid. p. 188.
(*n*) Concil. *Cabil.* can. 18. ib. 193.
(*o*) Concil. *Rhem.* can. 38. ib. 204.
(*p*) Concil. *Aquens.* A. 837. c. 18. *Metens.* An. 890. c. 2. *Tribur.* An. 895. c. 13.
(*q*) Capitul. l. 2. cap. 38. Et lib. 4. cap. 40. Et lib. 5. cap. 46. & 89, &c.
(*r*) Vid. *Bin.* T. 3. p. 1. §. 2. p. 325.

what they could spare of the Tithes. But we go on to supply Mr. *S.* his omissions of the Opinions of private Fathers in this Period. *Paschasius Rathbertus* saith, *Christ doth not relax the Tithing of the least things——and therefore it is lawful to offer them as pertaining to the honour of God* (*s*). *Agobardus* (who Mr. *S.* calls a great and Learned Author) tells us, that *the Fathers reckon Tithes among the things that are Gods,—— and what Christ saith ought to be done, was then and ever will be fit to be performed* (*t*). *Walafridus Strabo*, besides what Mr. *S.* quotes out of him, thus argues, *If the Jews paid Tithes so strictly—— why should not Christians more carefully fulfil the same Command, who have more Priests, and a purer Worship*; adding a little after, that *this* will bring God's Blessing on the Peoples labours, and leave the Priests freer to attend their Ministry (*u*). His contemporary, *Rabanus Maurus*, saith, *It is the Lord's Command both in the Old and New Testament, that Ministers should live of Oblations and Tithes* (*w*). *Hincmarus Rhemensis* threatens Lay-men with God's Judgments for usurping *Tithes*, saying, *Belshazzar* was not guilty of so great a Sacriledge (*x*). In his time also it is plain, *That Tithes belonged to the Church by the Sacred Canons* (*y*); and he speaks of a Church which had its Glebe, and the *Tithe of the Faithful* (*z*); which, together with the Opinions of the Popes, and the Articles of enquiry at Visitations, *whether the People had paid their Tithes*; as also the *Penitentials*, which order the neglect to be confessed *as a grievous Sin*, all cited by Mr. *S.* pag. 123. These, I say, sufficiently prove, that both the Opinion and Practice of this Age declares, they generally thought *Tithes* were due by the Law of God; and if our designed brevity would allow it, we might bring many more Proofs thereof. But Mr. *S.* hopes to undermine all this, by pretending, *That the practice of the Time allowed by the Clergy, of disposing Tithes to Monks, Nuns, Hospitals, and religious Orders of Knights seems to contradict this Opinion* (*a*). I answer, that the disposal of them by the Clergies consent (and other disposals the Clergy never allowed) doth rather prove, they were held originally due to the Clergy by God's Law, than

(*s*) *Paschas.* in Math. l. 10. An. 820.

(*t*) *Agobard.* de dispens. rei Eccles. p. 277. An. 828.

(*u*) *Walafrid. Strab.* de reb. Eccles. cap. 27. An. 480.

(*w*) *Rab. Maur.* in Num. l. 2. c. 23.

(*x*) *Hincmar. Rhemens.* de stat. Eccles. p. 653 An. 850.

(*y*) Idem, ep. 7. cap. 35.

(*z*) Idem in *Hincmar. Laud.* cap. 35.

(*a*) Hist. *Tithes*, Ch. 6. p. 125.

than any way contradict it: And *Ivo*, Bishop of *Chartres*, doth not say, *The Church might give Tithes to Monasteries and Hospitals by the Law of Justice*; but *by the Law of Charity*, which is no more than any man may do by his own estate; but the same *Ivo* there saith, *Tithes principally belong to the Clergy, who may (if they please) enjoy all they have in common with the Poor* (*b*); and Mr. *S.* cites *Ivo* wrong in the next Page, *viz.* 126. where he saith, *Monks could not receive* Tithes *ab iis ad quos non pertinent* (so is the true reading) *from Lay-men to whom Tithes did not belong* (*c*); wherefore he is a good Witness, that it was then believed Monks had no right to Tithes, otherwise than as the right owners, *viz.* the Bishops bestowed them upon them. I grant, that the Bishops did ill in making such dispositions of Tithes to Monasteries; but since there were Monks in Orders who did administer Sacraments and Preach, and their Administrations and Prayers were esteemed the most efficacious of all; yea since these Regulars were counted the holiest sort of Clergy-men, I cannot think those ancient Bishops acted so much against their Consciences, or did commit so fearful a Sacriledge, as Mr. *S.* pretends, in consenting to such disposal of Tithes to Monks, though they still held them due to the ministring Clergy by Gods Law, because they reckoned Monks among the Clergy, and thought they did well in assigning Tithes to them; and *Innocent* the Third calls the giving of Infeodate Tithes to a Monastery, *recalling them to the Churches use* (*d*), the Disposition was made by the right owners, and for the service of the Church, as they believed, wherefore it was not contrary to their Opinion at all: yea, Mr. *S.* is forced to prevaricate, *pag.* 126. to make some colour for this pretence, saying, *The Clergy held it contrary to the Divine Law to convey Tithes to any other Church than where the Owner received his Souls food*: For the proof he brings only saith, it was *contrary to the Divine Law and Sacred Canons to dispose of Tithes to another Church, Contempta Episcopi dispositione*, that is, without the Bishop did so dispose of them (*e*), which Sentence had Mr. *S.* put in, it would have appeared the practice was not contrary thereunto. Again, he wonders

(*b*) *Ivo Carnot.* Ep. 207.

(*c*) Idem. Ep. 192.

(*d*) Decret. l. 3. Tit. 10. c. 7. p. 1195.

(*e*) Concil. *Ticin.* ap. *Bin.* T. 3. p. 1. §. 2. pag. 400.

ders, *If Tithes were then held to be due by the Divine moral Law, how the Pope could grant* Exemptions, *and asks, if* Rome *were then ſo bold to grant Diſpenſations againſt the Law of God* (*f*)*?* I anſwer, That *Rome* even then declared expreſly, *That the Pope could diſpenſe with the Law of God* (*g*), though the pretence of Monks being of the Clergy ſerved the Popes to excuſe this, as if it were not a diſpenſing with Gods Law. However impartial men (even of thoſe who loſt nothing by theſe Diſpenſations) did blame both the Pope and the Monks too, for them, and did rightly condemn them as contrary to God's Law. *Since the Lord commands Tithes to be paid* (ſaith *Peter Bleſenſis*) *who can diſpence againſt his Precept? Where divine and humane Laws are contrary, God is to be obeyed rather than Men* (*h*). *Sarisburienſis* not only ſays, theſe Exemptions derogate from the Divine Conſtitution; but affirms, *There were ſome things which were not expedient for the Pope himſelf to do.* And though he durſt not condemn the Pope, yet he freely reproves the Monks for ſeeking them, or making uſe of them (*i*). As for *Infeodations*, Mr. *S.* will inform us, what cunning diſtinctions the Schools invented to make the irregular Acts of ſome Biſhops look plauſible, *pag.* 156; but he grants, they were condemned and diſanulled by Popes and Councils (*k*), and therefore from a few condemned Acts, no general inference can be made againſt the common Opinion of the divine right of Tithes. Much leſs can any thing prejudicial to that Opinion be inferred from Tithes Infeodate in Lay-hands from their firſt creation, ſince there never were any ſuch Tithes, nor can he produce one Inſtance of them.

(*f*) Hiſt. *Tithes*, Ch. 6. p. 127.

(*g*) Gloſſ. ad c. 25. qu. 1. ſunt quidam.

(*h*) *Pet. Bleſenſ.* ep. 82.

(*i*) *Joh. Sariſb.* de nugis Curial. l. 7. c. 21.

(*k*) Extrav. de *Decim.* c. 15. ad hæc. Append. ad Concil. *Lateran.* par. 4. c. 1. To which add, *Alex.* 3. in Concil. *Turon.* An. 1163.

§. VII. When neither Devotion, nor the Doctrine of the Fathers with Church Canons, were ſufficient to cauſe ſome to pay Tithes, then pious Princes firſt began to make Secular Laws to compel the refractory. The ancienteſt inſtance of ſuch a Law is that of *Congallus*, King of *Scotland*, *An.* 570, which enjoyns general payment there; but Mr. *S.* not only removes it into this Period, but labours to

to diſcredit *Hector Boetius*, who relates it (*l*) as if he feigned it, though he gives no other reaſon of this charge than this, That *Buchanan* hath left out the name of *Tithes*, and only ſaith, *He enriched the Clergy with Lands and other Profits.* I anſwer, *Buchanan* is a late Hiſtorian, and (ſince he had a hand in the taking away Tithes from the Clergy) may juſtly be ſuſpected to leave out the name of *Tithes*, the better to colour his own ill deeds, and having ſuch cauſe to be partial, he is not to be credited againſt an old Hiſtorian, eſpecially ſince the ſame *Hector* ſaith, *Wonderful things are recorded of the Piety of this Prince.* And one of this Kings Succeſſors, *An.*840, made a Law, *That the Biſhops Courts only ſhould have cognizance of Tithes* (*m*), which ſuppoſes they had been anciently and generally paid there. *Machbeth* alſo renewed this old Law for Tithes in *Scotland* about *An.*1050, as Mr. *S.* confeſſes, and *Hector Boetius* with *Spelman* confirm that relation (*n*). The Imperial Laws for *Tithes* were made as ſoon as ever the Barbarous Nations, that had long overrun the Empire, were ſubdued; and it was the remains of Barbariſm which made it neceſſary for *Charles* the Great (as ſoon as he had reduced things to a peaceable ſtate) to make theſe Capitularies for Tithes, divers of which we cited before §.6, and we now add many others (*o*). And Mr. *S.* grants, that theſe Imperials do ſettle Parochial right, decreeing, *That every Church ſhall have its Bounds, that it may be known of what Villages it muſt receive Tithes* (*p*). But though there were plenty of theſe Laws to chooſe of, Mr. *S.* cites one only at large (which he produced once before) becauſe it intimates, ſome were ſo wicked to force the Prieſts to redeem their Tithes (*q*), however it appears, the practice was condemned and puniſhed by the Secular Magiſtrate. At length Mr. *S.* being preſſed with the force of ſo many and clear Laws, invents this evaſion, *That the effect, of theſe Laws were ſhort, and it appears enough in ſtory, about An.*845, *that little or no practice was of any of thoſe Laws* (*r*). An aſſertion as ſtrange as it is untrue; for *Lewis* the firſt, who made divers of theſe Laws, lived till *An.* 841, and *Carolus Calvus*, who made others

(*l*) *Hector Boet.* hiſt. *Scot.*l.9.

(*m*) Idem hiſt. *Scot.*l.10.

(*n*) *Hector* hiſt. *Scot.*l.12. *Spelm.*Concil. Tom.1.p.571.

(*o*) Capitul. lib.5. c.106, 123.lib.6.Cap. 29,41. Addit.3. c.51. Addit.4. c.73.

(*p*) Capit.lib.1. cap.155.item Cap.152,153, 154.ibid.

(*q*) Cap lib.5. cap.46. cited in *Seld.*p.79.

(*r*) Hiſt. *Tithes*, Ch.6.p.132.

others of them lived till *An.*879; and ſince he grants *Tithes* were generally required and paid in *Charles* the Great's time, *pag.* 70, and *pag.* 131, who can imagine they ſhould ceaſe in his Sons and Grandchild's days, even while new Laws were daily in making to confirm them? none of Mr. *S.* his Quotations do prove any ſuch general omiſſion. *Baronius* is ſpeaking of the obſtinacy of ſuch who detained Tithes infeodate, and ſhews God's Judgments on the Nation for it (*s*); but this is nothing to Parochial Tithes: and thoſe five Epiſtles of Pope *John* the Eighth do not once mention Tithes, but complain of ſome who wronged the Church of *Rome* and other Biſhopricks of their immoveable goods, *i.e.* their Land, and who violently took away *res Eccleſiæ*; but this is nothing to a general neglect of Parochial Tithes: Nor can any more be inferred hence, but only that there were ſome Sacrilegious and unjuſt Perſons in that Age, as there are in all Ages; but who would conclude from thence a general ceſſation of the execution of Laws? Yet on this ground Mr. *S.* builds many Caſtles in the Air, which fall of themſelves, as ſoon as this tottering foundation is removed, and indeed the *Nona* and *Decima* (ſo often named in the *Capitulars*) paid by the Church Tenants do declare, that beſides the Ninth part due for rent, that Age believed, the Tenth was of it ſelf due to the Church; and accordingly they paid both *Ninths* and *Tenths*, as Mr. *S.* himſelf confeſſes; which, together with the former proofs out of *Hincmarus* and others, do fully ſhew, that Parochial Tithes were then generally paid in obedience to the Imperial Laws then in force. And no wonder, ſince the Canons of the Church alſo enjoyned the ſame thing, as appears by the Councils of *Mentz*, *Arles*, *Chalons*, *Rhemes*, *Aix*, *Metz*, *&c.* cited before §. 6. and to all theſe were added Pontifical Decrees, which were much regarded about that time; and though Mr. *S.* can find no Papal Decree ancienter than that of Pope *Nicholas*, *An.*1059 (*t*), yet we affirm the three laſt Books of the *Capitulars* were confirmed by Papal Authority before the year 900 (*u*), yet in thoſe Books Tithes are often fully and ſtrictly enjoyned.

(*s*) *Baron.* Tom. 10. An. 845, 846.

(*t*) Hiſt. *Tithes*, Ch. 6. p. 134.

(*u*) *Capit.* l. 7. cap. 377.

Again,

Again, that Decree of Pope *Leo* the Fourth, *An.* 850, *That it seemed good to him and his Predecessors, Tithes should be justly paid by the People to their Baptismal Churches* (*w*), is a plain constitution, and not barely a declaration of his Opinion, for *Visum est* was the old style of Laws, and Popes use not to preach, but command in their *Decretals*; yea, *Luitprandus* expresses this very thing in the highest terms of command, *We enjoyn by Apostolic Authority, &c.* and a little after he saith, the Pope *Excommunicated those who did not obey this Decree* (*x*). Wherefore, though the Decrees of Popes were not collected into one body till *An.* 1051, yet there were Decrees made, and in many places obeyed, long before, concerning Tithes. And as the Popes Power increased afterwards, so these Decrees grew more numerous, so that 'tis endless to repeat them all, only we shall note that so many Papal Decrees grounded upon old Canons, and added to Imperial Laws, must needs settle this ancient payment of Tithes; and none that will impartially weigh the force of all this Authority, can think that Tithes were now generally not paid. But Mr. *S.* objects out of an Epistle of Pope *Gregory* the Seventh to some Princes of *Spain*, that the Pope there *only perswades and exhorts, but doth not command the payment* (*y*). I reply, Mr. *S.* commits many mistakes in his relation of this Epistle, for it was not writ to any Princes of *Spain*, there being no *Gothic* Princes there at that time, for *Alphonsus* is by the same Pope styled *Rex Hispaniarum* in another Epistle, and the Title of King of the *Goths* wholly ceased there after the year 713 (*z*). Nor was there in *Spain* then any such *Gothic* corruption as to occasion the Popes joy, *for the New conversion of the Nation, which leaving the Pagan errors were come to the true Christian Faith*, as *Gregory* speaks in this Epistle (*a*); wherefore this Epistle was sent to the *Gothic* Princes of *Sweden* and *Denmark*, then newly converted from Paganism (*b*); yea this Pope *Gregory* the year before writ an Epistle *Suetonum Regi*, to the King of *Swethland*, declaring he had heard that the Christian Faith was begun to be preached there (*c*). To these *Gothic* Princes therefore he writ this Letter,

(*w*) Const. 16. qu. 1. c. 45.

(*x*) *Luitprand. vit. Leon.* 4.

(*y*) Hist. *Tithes*, Ch. 6. p. 136.

(*z*) *Rod. Sanct. histor. Hispan.* lib. 1. cap. 11.

(*a*) Ep. *Greg.* 7. Regist. lib. 9. ep. 14. apud *Bin.* Tom 3. par. 2. p. 372.

(*b*) *Krantz. Danic.* l. 4. & *Suec.* l. 5. c. 10.

(*c*) Regist. *Greg.* 7. l. 8. ep. *Bin.* ib. p. 361.

Letter, who with their People being new Converts, they were rather to be dealt with at firſt by entreaty than by command; and yet the words of this Epiſtle are high enough conſidering the circumſtances, *We admoniſh you.* (ſaith he) *by the Authority of the holy* Roman *Church, and in the name of the Apoſtles* Peter *and* Paul, *to give Tithes, and enjoyn them to your whole Kingdom,* which are the words of this Epiſtle: and his Succeſſor writes more ſtrictly ſtill to the ſame *Goths*, *We command you, that the People committed to your government, do faithfully and devoutly pay Tithes, as it is known the Lord inſtituted, and that ye diligently warn them ſo to do, yea, if need be, under penalty of Excommunication* (*d*). So that it is now made very evident that there were Imperial Laws, Canons of Councils, and Decrees of Popes from the beginning of this 400 years to enjoyn the payment of Tithes; and there is abundant proof of general practice long before Pope *Gregory* the Sevenths time; ſo that Mr. *S.* is too confident of his own performances to fancy he hath ſufficiently ſhewed the contrary; yet ſtill he ſuggeſts, *No General Council in Pope* Gregory's *time had once remembred the Duty, and the firſt that mentions them is that of* Lateran, *An.* 1119 (*e*). I reply, There was no need for General Councils to mention them, ſo long as either Devotion, or Provincial Laws and Canons were ſufficient to make them paid; but there was a Canon of a *Roman* Council under this very Pope *Gregory*, *An.* 1078, wherein the Lay-men, who detained Tithes from the Church, are enjoyned under penalty of damnation to reſtore them (*f*), and that General Council of *Lateran* he ſpeaks of, *An.* 1119, ſpeaks of them as then belonging to Pariſh Churches, and pertaining to the Biſhops (*g*). The next General Council of *Lateran*, under *Innocent* the Second, *An.* 1130, *condemns Feudal Tithes, as contrary to Parochial right, which is there clearly ſuppoſed ancienter than Infeodations; and the word* Reſtore *them to the Church, ſhews that it was then believed they were taken away from the Church at firſt* (*h*). Again, the next General Council of *Lateran* clearly ſuppoſes the antiquity of Parochial right, *An.* 1180, for it prohibits Tithes

(*d*) *Alex.* 3. Epiſt. 19.

(*e*) Hiſt. *Tithes*, Ch. 6. p. 137.

(*f*) Synod. *Rom.* ſub *Greg.* 7. ap. *Bin.* T. 3. p. 2. pag. 400.

(*g*) Concil. *Lateran*, An. 1119. *Bin.* Tom. 3. p. 2. pag. 465.

(*h*) Conc. *Lat.* *An.* 1130. ap. *Bin.* ib. p. 487.

Tithes to be infeodate, or conveyed to Monasteries, because such disposition of Tithes would be injurious to Parish Churches, which were then in possession of them (*i*); and the exemption of Leprous People from Parochial Tithes, *Can.*23, is undeniable proof that Parochial Tithes were then commonly claimed and received: so that though none of these Councils purposely command the payment of Parochial Tithes, because there was no need, yet (for all Mr.*S.* his pretences) they all expressly suppose them a duty of common right, and usually paid. But his reason for all this shuffling is to make out an assertion of his Friends, the Common Lawyers, *viz. That before the Council of* Lateran *every Man might have given his Tithes to what Church he would.* A saying that may be true in one sense, *viz.* they might do it with the Bishops and Incumbents consent, both which were by the last named Council of *Lateran*, *An.*1180, forbid to consent to any such disposition of Tithes, and the religious Orders were prohibited to receive them. And this (very likely) was the meaning of the old Lawyers by this their common saying: But as Mr.*S.* expounds it of arbitrary disposal of Tithes by Laymen, without any consent of the Bishop, it was always false, and he plunges himself into a thousand difficulties to make out this strange fancy; being forced to suppose here, that this last named Council of *Lateran* only prohibited Religious houses to receive newly created Tithes without the Bishops consent, whereas the Decrees of former Popes, and the History of that time assure us, the *Roman* Church designed long before to cut off that innovation of Lay-mens disposing any sort of Tithes without Episcopal consent, yea even of infeodate Tithes, of which Pope *Innocent* the Third (*Alexanders* Successor, who knew the meaning of this Canon better than Mr.*S.*) expounds the preceding Canon of *Alexander*'s *Lateran* Council, as Mr. *S.* confesses, *pag.*139; yea he himself thinks it may be meant of infeodate Tithes, *pag.*146, and therefore we doubt not to conclude that Tithes were paid parochially long before this Council of *Lateran*, and that there was

(*i*) Concil. *Later.* An. 1180, Can. 9. ap. *Bin.* ibid. pag. 557.

no time when Arbitrary Lay Consecrations were allowed or much practiced; for Laws, Practice, and Opinion of this Age, all agreed to demonstrate they believed Tithes were due to the Clergy *Jure Divino.*

§. VIII. We might here have concluded this Chapter, but only that in the *Review*, where we might have expected a retractation of some of the Errors and Mistakes of this Chapter Mr. *S.* persists in his Opinions, and asks, *How the Founders of Monasteries could have made Tithes part of their endowment, if Parochial payment were not frequently omitted or continued by Lay-men at their pleasure* (k)? I reply, By the consent of Bishops and Popes they might give Tithes to Monasteries, though Parochial payment were not arbitrary; and we have proved that Bishops did not only confirm Lay Donations afterwards, but always consented to them at first, and this consent only made them valid. Indeed these Charters of Bishops are sometimes called *Confirmations*, but they were Confirmations *Non solum ad solennitatem, sed ad necessitatem actus*, as the *Canonists* speak; and the Bishops use of the words, *Damus & Concedimus*, very frequently in those Grants; but the name of a Confirmation properly signifies the Charter of some following Bishops, who having seen the Lay Founder's Grant with his Predecessors Charter, allowing it and making it valid at first, he by a new Charter confirms that which was granted by his Predecessor before. But as for Parochial Tithes, the Grant of them by a Lay-man to any Monastery without the Bishops consent, was always void, and not only after the *Lateran* Council, or the year 1200; as appears by one of his own Instances, *Where Tithes given to a Monastery by a King and Queen of* Hungary, *and confirmed by Pope* Clement *the Third divers years before*, were by Pope *Innocent* the Third, *An.* 1200, declared to belong still to the Church, to which they were due of old, and the Donation and Confirmation are both made void, for want of the Bishops consent at first had (l). But Mr. *S.* his other instance of the Donation of the Knight of *Berry*, was a gift of infeo-

(k) *Sild.* Review, pag. 467, 468.

(l) Decret. l. 3. tit. 30. cap. 31. pag. 1347.

date

date Tithes with the Biſhops conſent, which Pope *Innocent* is ſo far from declaring void (as Mr. *S.* fully pretends) that he expreſly declares, for ſuch Tithes, if any Lay-man will give them to a Covent with the Biſhops conſent, it ſhall ſtand firm for ever: ſo that he utterly miſtakes this Decree, it being not of any Parochial Tithes, nor doth the Donation make it void (*m*). And we may juſtly wonder at Mr. *S.* his confidence in ſaying concerning theſe two Inſtances, *That every Canoniſt will acknowledge they were of new Creation*, at leaſt not of *Infeodate Tithes*, when as the former Example is of Tithes anciently *debitas Eccleſiæ Veſprimenſi*, and ſo no New creation: and the latter is expreſly ſaid to be meant of *Infeodate Tithes* in the very words of the Decree, and ſo neither of them prove what he intended. But if any ask, why Biſhops did more frequently diſpenſe with Parochial right before the year 1200, than afterward. I reply, That it was of old believed the ſole right of all Tithes in the Dioceſs were in the Biſhop, and while the Monks were poor, and had a great fame of Piety, the Biſhops often encouraged the Diſpoſal of Tithes to them; but as they grew rich, and Parochial Rectors impoveriſhed by theſe Grants, it was judged a Male-adminiſtration, and condemned, and by degrees diſuſed.

(*m*) Decret. l. 3. tit. 10. cap. 7. pag. 1194.

He had told us, *pag.* 70, theſe arbitrary Lay-Grants were clearly allowed by the Clergy, yet here he ſaith, *They were practiced againſt many Canons both Papal and Synodal* (*n*); but who can believe the ſame men did clearly allow, yet frequently condemn the ſame thing? wherefore we affirm ſuch Grants were never allowed by the Clergy without Eccleſiaſtical conſent. And whereas he pretends the Monks had divers Tithes ſo granted by Lay-men arbitrarily, for which they (as he ſaith) cunningly pleaded no Title but *Preſcription*, after they perceived the Donation of Lay-men was not allowed without Epiſcopal conſent. I Anſwer, There would have been no cunning at all in this plea, becauſe Preſcription was never allowed where the Thing was not fairly come to at firſt, as is expreſly declared by Pope *Innocent* in the Example of the Monaſtery endowed by

(*n*) *Sild.* Review, p. 469.

the King and Queen of *Hungary*, mentioned just now; for when the Monastery pleaded Prescription, it was said, *No Prescription could have beginning from a Lay Donation; and because no Lay-man could give that to another which he had no right to himself, therefore the plea of Prescription was not allowed, and the Donation is made void* (o). And the *Decretals* cited by Mr. *S.* in the Margen speak not of Prescription grounded on Lay-Grants, or pleaded by Monks against Parochial right, but of Prescription pleaded by one Parish Church against another (p); and one of them expresly saith, *No Prescription can be grounded on a Lay-Donation* (q); and another, "In prescription of Eccleſiastical profits, *bona fides & justus titulus exigatur* (r). Therefore unless the Lay Donation were confirmed by a Bishop originally, it is evident Prescription could not be pleaded in bar to Parochial right. But at last, after all these attempts to prove arbitrary Lay Consecrations, Mr. *S.* complains, *He cannot find in the Leiger Books, or ancient Libels, any title to Tithes derived from these Arbitrary Consecrations, nor is there a formulary of any Libel in* Durandus *that touches this kind of Grants* (s). And no wonder, for there never were any such Arbitrary Consecrations, but in Mr. *S.* his imagination; so that he truly confesseth this Doctrine is new, and never pointed at before, and therefore 'tis not strange that the poor Monks 400 years ago (never dreaming of this New invention) did not draw their claims to Tithes by Mr. *S.* his Novel Scheme; yea 'tis a little hard he should condemn them for unjustly concealing their Lay Benefactors bounty, since they do in their Leiger Books frequently mention Lay-Donors of Tithes, but withal they also record the Bishops consent which made them valid, and the true reason why they set down no Tithes given them only by the gift of Lay-men, is, because there was no such thing. His discourse about *Appropriations* wholly relies on this false foundation also, that divers of them were made by Lay-Patrons alone; which I have disproved before, and therefore shall only remark, that he grants here *even a dedication of Tithes to Gods service, if it had been made by a Lay-man at first, make-*

(o) Decret. l. 3. Tit. 30. cap. 31.

(p) Decret. l. 2. tit. 26. cap. 6. pag. 933. & c. 8. p. 934.

(q) Decret. l. 2. tit. 26. cap. 7.

(r) Ibid. c. 17. pag. 498.

(s) *Seld.* Review, p. 470.

makes them ſo ſacred, that no Lay-man can ever after have a good Title to them in Equity and Conſcience, which he would have our Impropriators ſeriouſly to conſider, ſince it is deſtruction to a man to devour that which is holy. The Exhortation of *Gerold*, Biſhop of *Oldenburg*, to thoſe of the Deſarts of *Wagria*, to pay Tithes (*t*), is not ſo very contemptible conſidering the Age he lived in, and may be juſtified if taken in a Latitude allowable to all popular diſcourſes; and however the encroaching Monks might ſcoff the Biſhops, as if they went from the buſineſs in hand, when they turned their diſcourſe to reprove them for unjuſt taking away Parochial Tithes. I am ſure there was great need to put a ſtop to that growing miſchief, which had ſo impoveriſhed the Pariſh Rectors in that Age, as might in time have ruined Religion it ſelf. As for *Infeodations* coming from the Church at firſt, he brings nothing new to diſprove it here, but confeſſes it was believed ſo very anciently, and brings one good Argument to confirm it was really true, *viz.* That no Tithes are paid to the Church out of any ſuch Infeodations which would ſometimes have been claimed, but only that theſe Tithes now alienated by Infeodation with the Biſhops conſent, were the very ſame Tithes which had firſt belonged to the Church; and Mr. *S.* (who never yet produced one clear Example of any Infeodation that did not originally come from the Church) here gives one clear inſtance out of *Ivo*'s 289 Epiſtle of an Infeodation made by a Biſhop: So that reaſon, authority, Laws and hiſtory of practice do thus far declare, that Tithes were ever reputed to belong to the Church.

(*t*) *Seld.* Review, p. 472.

CHAP.

CHAP. VII.

Of Tithes ſince the Year 1200.

§. I. THis Chapter Mr. *S.* begins with a confeſſion, that Parochial right became now to be more eſtabliſhed (*u*); but he commits two great miſtakes, and both grounded upon his old erroneous Suppoſition of Lay-mens arbitrary diſpoſal of Tithes, *viz.* *Firſt*, That Parochial right owed its original to the Canon Law, whereas we have proved it was in uſe long before it. *Secondly*, That it was a Uſurpation upon the Laities arbitrary power of giving Tithes, introduced by the Papal power; whereas all that the Pope did in this matter, was to retrench the Laity from uſurping upon the ancient and undoubted right of the Biſhops, and to reſtore the old uſage of regular Parochial payment; wherefore the Canons of thoſe Councils of *Lateran* forbidding Infeodations, and receiving Tithes from Lay-mens gifts, without the Biſhops conſent, mentioned by Mr. *S.* (*w*), were but a reſtauration of the Churches juſt and ancient right; and ſince he grants Parochial Tithes, were in the beginning of this Period claimed as due *De jure communi* (*x*). It is evident from this they had been ſetled by Law long before, yet Mr. *S.* whoſe buſineſs now is not hiſtorically to relate the manner of paying Tithes, but ſophiſtically to diſpute againſt regular payment, runs back into the time before *An.* 1200, to ſhew that Parochial payment was little obſerved then; but his Proofs are utterly inſufficient. The Covenants which Biſhops and Monks took from their Tenants, not to pay Parochial Tithes, are no evidence that the Laity did not pay them, and they clearly ſhew Parochial Tithes were demanded then, even of the Clergy who had Land in other Pariſhes, or elſe what need of theſe Cove-

(*u*) Hiſt. *Tithes*, Ch. 7. p. 141.

(*w*) Ibid. pag. 142, 143.

(*x*) Decret. *Innoc.* 3. An. 1200. lib. 3. Tit. 30. c. 29. pag. 1344. & c. 31. p. 1346.

Covenants; and this practice is condemned in the Council of *Chalons*, *An.* 813, (400 years before the beginning of this Period) and there it is decreed, *That notwithſtanding theſe Covenants the Tenants of Biſhops and Abbots ſhould pay Tithes to the Church where they heard Divine Service* (*y*). So that Parochial right prevailed againſt ſuch Covenants many hundred years before this Period began. And if Exemptions (which Mr. *S.* ſaith were got about *An.* 1100) did make ſome Monks preſume to renew this unjuſt practice, yet he confeſſes it was remedied in the General Council of *Lateran*, *An.* 1215, and indeed it was prohibited in a former *Lateran* Council, *An.* 1160 (*z*), that is, as ſoon almoſt as this ill uſage began to revive; but Mr. *S.* puts that quotation very cunningly into his Margen, and cites only in his Diſcourſe the Council nigh 50 years later. His ſecond inſtance, of the Archbiſhop of *Matera* complaining to the Pope, That the Tenants of ſome religious Perſons would not pay their Parochial Tithes, makes ſtrongly for us, becauſe that very Decree ſaith, *It appears Tithes were fully paid in former times, while theſe Lands were in the hands of Laymen, and therefore he decrees they ſhall be fully paid henceforth to the Churches to which they are due* (*a*). So that this Decree ſhews Parochial payment preceded this uſurpation, and reſtores an old due unjuſtly interrupted for a while. *Thirdly*, the Council of *Tribur* doth not ſuppoſe Men had a liberty to make any Church their Pariſh, by paying Tithes thither; but it ſuppoſes Men did conſtantly pay their Tithes, while living, to their own Pariſh Church, and therefore it orders them to be buried there when they died (*b*); yea the very Canon before *Can.* 14. doth expreſly decree, that Tithes ſhall be paid to the old Pariſh Church. *Fourthly*, 'Tis true *Alexander* the Third, *An.* 1180, would not determine whether Predial Tithes ſhould be paid to the Church in whoſe Territory the Land lay, or to that Church in whoſe Pariſh the Owner lived; but this very doubt ſuppoſes Parochial right agreed upon, and that it was certain Tithes muſt be paid to ſome Pariſh Church, the only queſtion is, when two Churches claim the ſame Tithe, to which it ſhall be aſſigned

(*y*) Concil. *Cabilon.* can. 19. ap. *Bin.* T. 3. p. 1. §. 2. p. 193.

(*z*) Append. ad Concil. *Later.* par. 13. c. 6. ap. *Bin.* Tom. 3. par. 2. p. 598.

(*a*) Epiſt. Decr. *Innocent.* l. 2. pag. 483.

(*b*) Concil. *Tribur.* Can. 15. An. 895. *Bin.* T. 3. p. 2. pag. 214.

assigned (*c*). Yet even this was decided presently after, for about *An.* 1182, P. *Lucius* ordered, that Predial Tithes should be paid where the Land lay, and Personal Tithes where the Party dwelt (*d*); wherefore Mr. *S.* most unjustly infers from these Doubts, that *Parochial right was not so much as in Opinion established about the Year* 1200 (*e*), whereas if there had not been a general opinion of Parochial right, there could have been no such doubts. *Fifthly*, The Decree enjoyning the Monks of *Boxley* to pay Parochial Tithes, was not made by *Alexander* the Third, but by his Predecessor *Adrian* the Fourth, *An.* 1155; and if this payment had been enjoyned *because they were wont to be paid fully before the Monks came thither*; that would shew that Parochial payment was become a custom before the year 1144, when *Boxley* Abby was founded (*f*), and as well in all other places as there, for ought appears to the contrary in the *Decretal*: Yet the best Copy of that Decree reads otherwise, and grounds not the Order on any Custom, but saith, *The Bishop shall compel those Monks to pay Tithes as fully as they had been paid before they came into that Parish* (*g*). So that here we see Parochial right prevailed against the Monks pretences long before that General Council of *Lateran*, which he would perswade us first fixed that right. And now at length Mr. *S.* grants, what he disputed so hotly against *pag.* 138, 139. *viz.* That the aforesaid Canon of that *Lateran* Council was not concerning Parochial Tithes, but only concerning passing Feodal Tithes out of Lay hands to the Church, and in that case the Bishops consent was sufficient to make such a Conveyance good; but not to make good a Lay donation of Parochial Tithes: which abundantly proves Parochial right was not setled in that *Lateran* Council, but established long before; and we have Mr. *S.* his own confession in the end of this Section, *pag.* 149, *That this Council did not directly constitute Parochial right, but rather supposed it as of former time.* Wherefore it is to no purpose for him to bring in that gross mistake of his dull Monkish Historians, who say, that Pope *Gregory*, *An.* 1274, in the Council of *Lyons* first ordained, *That no man*

(*c*) Decret. l. 3. Tit. 30. c. 18. pag. 1334.
(*d*) Ibid. c. 20. pag. 1335.
(*e*) *Seld.* hist. Tithes, ch. 7. p. 146.
(*f*) Monastic. *Angl.* T. 1. pag. 827.
(*g*) Decret. l. 3. Tit. 30. cap. 4. pag. 1327.

man ſhould aſſign his Tithes at his own will, as formerly, but ſhould pay them all to his Pariſh Church: for this was conſtituted long before, and Mr. *S.* grants therere is no ſuch matter to be found in that Council of *Lyons*, out of which they pretend to take it; ſo that it muſt paſs for a miſtake of the Monks, unleſs they mean it of that *Lateran* Council, which allowed not ſuch diſpoſals of Parochial Tithes, no not with the Biſhops conſent, becauſe they found the inconvenience of impoveriſhing Pariſh Churches to enrich Monaſteries, ſo that indeed after this *Lateran* Council Parochial right was more ſtrictly obſerved than before. But as for what he cites out of a *Spaniſh* Council, *An.* 1322, concerning the liberty which Men had then in the Dioceſs of *Palentia*, to declare themſelves of what Pariſh they would, it is nothing to other Countries; for the reaſon is given in that very Council, *viz. Becauſe as yet no certain limits had been aſſigned to Pariſhes there* (*h*); but in *Italy*, *France*, *Germany*, and *England*, there were Pariſhes limited many hundred years before; wherefore there Parochial right was ſetled of ancient time, and from the beginning of this four hundred years very generally and regularly obſerved.

(*h*) V. Conc. ap. *Bin.* T. 3. par. 2. p. 811, 812.

§. II. The Opinions of this Age are leſs conſiderable, becauſe we have already related the ſounder Doctrine of the Holy Fathers, in times of more Learning and Integrity, and therefore the Canoniſts Opinion is moſt to be valued becauſe it is grounded upon the ſayings of Fathers and Canons of old Councils, and ſo comes neareſt to the ſenſe of the Primitive Ages: and Mr. *S.* confeſſes (*i*), they do generally hold *Tithes* are due *Jure Divino*, nor do they only cite the *Levitical* Law, but divers places of the Goſpel alſo to prove it (*k*). 'Tis true, the dependance they had on the Pope inclines them to give him too much power, (as in other things, ſo) in the diſpoſition of this Sacred Revenue, and hence they juſtifie Alienations, Appropriations and Exemptions by Papal Authority, eſpecially if the Biſhop conſent thereto. By which we may learn, that the

(*i*) Hiſt. *Tithes*, Ch. 7. p. 150.

(*k*) *Rebuffus* de Decimis, qu. 1. p. 13, & alii.

ill practice of the former Age in conveying Tithes to Monasteries, and exempting them, is no certain proof that Tithes were not held due by Gods Law in those times, for the *Canonists* generally hold them *Jure Divino*, and yet allow that practice. And now we shall only make two or three remarks on what Mr. *S.* saith of this point: *First*, He confesseth, Parochial right was so setled in this Age, that the Parson need make no other Title to Tithes, but only to prove they grew in his Parish, *pag.* 151. *Secondly*, That it was taken for granted by the *Canonists*, that S. *Augustine*, and S. *Hierom*, were clear for the right of Tithes, since their sayings were cited as Law in this matter. *Thirdly*, These *Canonists* generally disallow all Customs to do diminish the *Quota*, as being contrary to Gods Law, *p.* 153. *Fourthly*, And they generally hold all Feudal Tithes came from the Church at first, and cannot now be retained in Lay hands, but ought to be restored.

§. III. The Opinion of the School-men, as Mr. *S.* saith, was, *That only a Competency is due to the Clergy by the Divine Moral Law, the* quota *of a Tenth being but of Ecclesiastical Institution* (*l*). But we must observe, these School-men were generally Monks, who cunningly invented this Doctrine to spoil the Parochial Rectors of their Tithes, or however to get a Maintenance out of the People, besides what they paid to their Parsons; for *Alexander* of *Hales*, the first Author of this distinction, about *An.* 1230, was a *Franciscan* Fryer, and in that very place where he disputes this point, he concludes thus, *Therefore we are obliged now to give as large a quantity or larger —— Christians are bound to give this or more, if they will enter into the Kingdom of heaven* (*m*). After him *Aquinas* a preaching Fryer also saith, *The Tenth was instituted by the Church in a kind of humanity or condescension* (*n*); implying, this was the lowest measure; but that men were bound to give more, that is, (we must suppose) give to the Fryers beside the Tithe paid to the Parish Rector: But when the Monks found the Pope and greater Clergy inclinable to exempt Monasteries, and endow

(*l*) Hist. *Tithes*, Ch. 7. p. 156.

(*m*) *Alens.* Part. 3. qu. 51. m. 3.

(*n*) Secund. 2. qu. 1. art. 1.

endow them with Tithes taken from Pariſh Rectors, they thought nothing could better defend them in theſe unjuſt poſſeſſions, than this device of making Tithes to be of Eccleſiaſtical Inſtitution; for thus they could anſwer *Petrus Bleſenſis*, *Sarisburienſis*, and others, who had oppoſed this Practice, as being a diſpenſing with the Law of God. Beſides, this Opinion ſerved to defend them in the enjoying of Pariſh Churches and Tithes, only aſſigning a ſmall portion to the Vicar or Miniſtring Prieſt there, (a Practice which had its original from the Monks) and this they called *Competens beneficium*; *The Monaſteries* (ſaith *Hales*) *ought to aſſign a competent benefit to him that Miniſters the Sacrament, or elſe they are Robbers of the Church, and unjuſtly detain Tithes* (*o*). From this Opinion alſo ſprang divers other pernicious conſequences, as Mr. *S.* himſelf obſerves, *The opinion of Tithes, being meer Alms*, (he ſaith) *ſprang from hence* (*p*), and *Cuſtoms of paying leſs, yea of paying nothing, were hence allowed* (*q*). This Doctrine alſo is pleaded to take away the Juriſdiction of Tithes from the Church, and to juſtifie the Alienation of them (*r*). Wherefore this Opinion being invented for baſe ends, and the maintaining it producing ſuch miſchievous effects, ought by all means to be exploded. But we may be ſure Mr. *S.* will be wonderfully kind to an Opinion tending ſo evidently to undermine the Right of Tithes, and therefore he pleads, *That* Hales *was not the firſt Author of it, but that thoſe Ancients who ſpeak of* Lex Divina, & Deus præcepit, &c. *means no more than* Lex Eccleſiaſtica, & Eccleſia præcepit (*s*). This he infers firſt from the Practice of the time, in conſenting to *Appropriations*, *&c.* which he thinks in Conſcience they could not have done, if they had believed Tithes were due by Gods Law; but we have ſo fully ſhewed how that Practice and this Opinion was reconciled in that Age, that this Exception ſignifies nothing. And, *Secondly*, if any of the Late Doctors, who follow this Opinion of the Schoolmen, would gladly ſtrain the Fathers expreſſions (as Mr. *S.* here doth) and force them to ſeem of their own ſide, it is no wonder, ſince all novel Errors uſually ſeek the Patro-

(*o*) *Alenſ.* m. 16. art. 2.

(*p*) Hiſt. *Tithes*, Ch. 7. p. 166.

(*q*) Ib. p. 164.

(*r*) Ib. p. 181.

(*s*) Hiſt. *Tithes*, Ch. 7. p. 159.

nage of Antiquity. *Thirdly*, Therefore we will examine the places of the Ancients, and ſhew that *Lex Divina* in them doth not ſignifie *Lex Eccleſiaſtica*, as Mr. *S.* aſſerts. Not only *Major*, but *Bellarmin* alſo alledges, that S. *Ambroſe* ſaith *Lent* was *Divinitus inſtituta*, which yet they ſuppoſe means no more, but that it was of Eccleſiaſtical Inſtitution (*t*), and this they apply to the ſayings of the Ancients concerning Tithes: Yet the ſame *Bellarmine* elſewhere cites this very phraſe of S. *Ambroſe*, to prove *Lent* was inſtituted by Chriſt (*u*), which indeed ſeems to be S. *Ambroſe* his true meaning, only this ſhews *Bellarmines* honeſty, who turns theſe phraſes as he pleaſeth to ſerve a preſent turn. But it ſeems Mr. *S.* could not find any Author long before *Hales* who ſo uſed this Phraſe, for his firſt inſtance is but of Pope *Alexander* the Third, *An.* 1180, who ſpeaking of a preſcription of Tithes ſaith, *De jure divino & humano melior eſt conditio poſſidentis*; but whatever his MSS. Copy ſaith, I am ſure the *Decretal* hath no more than this, *De jure melior eſt conditio poſſidentis* (*w*); and if this be the true reading, then it is nothing to his purpoſe; yet if we allow his own reading *Alexander* may read it of the Divine natural Law, and ſo it will not prove what Mr. *S.* intends: however we are very ſure that this Pope *Alexander* did fully believe Tithes were due by the Law of God, and not by the Law of the Church only, for he ſaith, *They manifeſtly oppoſe the Divine Inſtitution, who do not pay Tithes to the Church* (*x*); and therefore in whatever ſenſe he uſe *Lex Divina* in the afore-cited *Decretal* (where there is no queſtion by what Law Tithes were due to the Church, but only to which of two Churches One portion of them belonged) it is ſure he was not of *Hales* his Opinion: Who is likewiſe falſly cited by Mr. *S.* as if he uſed the words *Jure Divino* for *Jure Eccleſiaſtico*, whereas *Hales* hath not the words *Jure Divino* there, but he is proving that Tithes ought to be free from Tribute, &c. *Becauſe* (ſaith he) *the Church receives not Tithes as a Common profit, but as the general Lords Tribute*, Autoritate Divinâ, *and therefore the ſtipend of Tithes is free from all obligation to Secular ſervice* (*y*), where.

(*t*) Major ad 4. ſent. diſt. 15. qu. 3. *Bellarm.* de Clericis, l. 1. c. 24.

(*u*) *Bellarm.* de verbo Dei ſcripto, l. 4. c. 9.

(*w*) Decret. l. 2. Tit. 26. c. 6. pag. 933.

(*x*) Append. ad Concil. *Later.* p. 4. c. 2. *Bin.* T. 3. p. 2. pag. 578.

(*y*) *Aleſ.* par. 3. qu. 51. m. 5.

where we see his words are (*by Divine Authority*,) and his sence must be more than Ecclesiastical Authority, or else how could Tithes be free from Secular service, if they were only of the Churches Institution? Wherefore I think he means plainly, *They are received by virtue of Gods Law*; and if this seem to contradict his former Opinion, I reply, that is no wonder, for elsewhere he saith, *Non cessavit Sacramentum Decimarum quia de Lege Naturæ, maximè fuit* (z): so that sometimes they are due by the Law of Nature, sometimes by the Law of God, and sometimes by the Laws of the Church, according to this Author. As for the Council of *Lateran*, *An.* 1215, it was in *Hales* his time, and however the phrase *Lex Divina* be used there, it will not thence appear it was anciently used so (which is that Mr. *S.* was to prove;) nor yet is it clear that those words of that Council, *Decimæ——quæ debentur ex Lege divinâ, vel loci consuetudine approbatâ* (a), do any way signifie as Mr. *S.* would have them; for an ancient *Canonist* (as Mr. *S.* confesses) interprets it of Predial Tithes due by Gods Law, and Personal Tithes due by the approved Custom of the place, which Mr. *S.* grants might be a tolerable Interpretation, if the distinction of Predial and Personal Tithes were as old as this *Lateran* Council, and for that matter Mr. *S.* himself in the next page cites this very distinction out of *Hales*, who lived at the very time of this Council (b); yea and he also tells us, that Pope *Innocent* the Fourth (who wrote long before he was Pope, *viz.* *An.* 1246) uses this distinction as well known in his time (c); wherefore since this is a good Interpretation, what reason is there to strain these words to any other Sense, especially since 'tis very plain, that Pope *Innocent* the Third, under whom this Council was assembled, did hold Tithes were due by Gods Law, and not by Ecclesiastical Law only, for he saith, *God hath reserved Tithes to himself by a special Title as a sign of his Universal dominion* (d), and again, *God commands them to be paid in token of his Universal dominion* (e), *they are due by Divine Constitution* (f), and *due by the Divine Command* (g). All which are plain proofs that he believed Tithes

(z) Idem p. 4. q. 2. m. 2.

(a) Concil. *Later.* can. 53. ap. *Bin.* T. 3. p. 2. pag. 692.

(b) Hist. *Tithes*, Ch. 7. p. 164.

(c) Ibid. p. 152.

(d) *Innocent.* ap. *Seld.* p. 144.

(e) Decret. l. 3. tit. 30. c. 26. pag. 1341.

(f) Idem ibid. c. 25. p. 1339.

(g) Idem c. 26. pag. 1342.

Tithes due by the Law of God, and ſo 'tis not reaſonable to expound *Lex Divina*, in his Council, by *Lex Eccleſiaſtica*; nor hath Mr. *S.* yet given one good proof that it is ſo uſed any where elſe, wherefore it remains that the covetous and crafty Monks firſt invented this Opinion: For *Hugo de S. Victore*, *An.* 1130, doth not at all countenance this Opinion, ſince the Liberty he ſpeaks of under the Goſpel, agrees not with the Monks Opinion of a Tenth, being determined by the Law of the Church. And indeed all the liberty this Author means, is a liberty to give more than a Tenth (as *Irenæus* held of old,) for he is plain enough that Tithes were due by Gods Laws now; *Tithes* (ſaith he) *are ſo inſtituted from the beginning, that they could never be alienated without ſin —— for they are reſerved under the Law of Grace for the Miniſters maintenance——ſo that it is Sacriledge for any to retain them, but thoſe to whoſe maintenance they were ordained by Divine Inſtitution* (*h*). We conclude therefore, that the School-men and Monks did firſt alter that, which was the Currant Doctrine of the Church about *An.* 1200, for a little before *Urban* the Third ſaid, *Tithes are known to be granted to the Miniſters of the Church, as well by the Old as the New Law* (*i*); and *Beleth*, *An.* 1200, *He that preſumes to retain Tithes, is become a Tranſgreſſor of the Divine Law, and ſins mortally* (*k*); and at the ſame time *Frederic* the Emperor ſaith, *The Duty of Tithes is confirmed by both Teſtaments* (*l*); and thus do all Authors of that Age ſpeak, ſo that it may be hoped, when divers (who have too greedily received this plauſible Opinion of the Schools) do perceive, that it is ſo contrary to Antiquity, and invented for evil ends, and that it is ſo prejudicial in its conſequences to the ſafety of that Sacred Maintenance, which ſupports the profeſſion of Religion, they will renounce it, eſpecially ſince it is falſe, as well as novel and miſchievous, as we have ſufficiently proved in this whole diſcourſe.

(*h*) *Hugo* de S. *Victore*, de Sacram. l. 2. p. 9. c. 10.

(*i*) Bibl. *Clun.* p. 1448.

(*k*) *Joan. Beleth.* explic. div. offic. c. 5.

(*l*) Conſt. *Sic. Frederic.* l. 1. tit. 6.

§. IV. The Spawn of the former Doctrine was the Opinion of the *Mendicant* Fryers, who taught, *that Tithes were meer*

meer Alms, not due by any right to the Pariſh Miniſters, and might be diſpoſed of or retained at the Owners pleaſure (*m*). But Mr. *S.* explodes this Doctrine as a baſe deſign meerly to get Tithes from the Secular Clergy, and to excuſe their detaining them in Lands belonging to their Monaſteries; and he tells us withal, that *Innocent* the Fourth writ againſt theſe new Teachers, *as preaching againſt both the Old and New Teſtament*, *An.* 1240. He brings in alſo *Richardus Armachanus*, *An.* 1350, as greatly complaining of them, noting withal, that *Wicklief*, *Brute*, and *Thorp*, followed theſe Fryers in this point, whoſe Arguments Mr. *S.* doth not think worth the relating, nor I the confuting. The Council of *Conſtance* (following in this, the Primitive Canons againſt the *Euſtathian* Hereticks) juſtly condemned theſe Innovators; and though the *Bohemians* agreed with theſe in denying the right of Tithes, it is to be obſerved, they had firſt ſpoiled the Clergy of all their Poſſeſſions, and then could not defend their Sacriledge, but by this ſpecious Error. *Eraſmus* it ſeems was at firſt inclined to this Opinion; but ſince he received a Parſonage in *Kent*, and took Tithes there afterward, there is no doubt but he recanted his former Principles, which is all I obſerve concerning this matter.

(*m*) Hiſt. *Tithes*, Ch. 7. p. 165.

§. V. Mr. *S.* had told us before, *pag.* 150, that the firſt Opinion was that of the *Canoniſts*, who held Tithes due *by the Divine Moral Law*; yet now he reckons as a Third Opinion, *That Tithes, as to the* Quota, *are due from the Moral or Divine Natural Law* (*n*), which ſeems to be the very ſame Opinion with the firſt. But he cenſures the Author of a *Penitential* made about the time of *Henry* the Sixth, for *impudently urging a Command given from God to* Adam, *about paying Tithes* (*o*). Yet *Hugo de S. Victore*, who was lately cited by Mr. *S.* with approbation, ſaith, *We believe that God taught* Adam *how to worſhip him, that he might recover his favour, loſt by the Tranſgreſſion, and he taught his Sons to give Tithes and Firſt-fruits* (*p*). *Peter Comeſtor* alſo ſaith, *We believe* Adam *by the Spirit taught his Sons to offer to God Tithes and*

(*n*) Hiſt. *Tithes*, Ch. 7. p. 168.

(*o*) Ib. p. 169.

(*p*) *Hug.* de S. *Victor.* annot. in *Geneſ.* c. 4.

and First-fruits (*q*). Nor is this Tradition without ancienter footsteps among the *Jews*, and *Abrahams* fixing on a *Tenth* so readily, as if it had been known from the beginning, makes it neither so impudent nor improbable, as Mr. *S.* pretends, that *Adam* had a Command from God to teach his Sons to pay Tithes. As for the condemnation of Fryer *Russel* as a Heretic, by the University of *Oxford*, for maintaining, *That Personal Tithes were not due by the Law of God, but only by Custom*; Mr. *S.* somewhat too rashly censures their Sentence, since it was the Opinion first of the whole Convocation, and then of that famous University of *Oxford*, to which also the University of *Cambridge* subscribed (*r*); and *Leutardus* in *Rodul. Glaber*, and *Wicklief* in the Council of *Constance*, had both been declared Hereticks before on the same account: And whereas he saith, *Many who search most curiously into this matter* (reckoning no doubt himself for one) *are of the same Opinion* (*s*). I reply, The School-men (who, he tells us, are most curious in this point) generally *make no difference between Personal and Predial Tithes* (*t*), no nor the Old *Canonists* neither (*u*), whom he counts to be the best (*w*). But S. *Paul* expresly saith, we must *give part of all our goods*, *Galat.* vi. 6. and S. *Augustine*, S. *Ambrose*, and others say, Tithe is due out of all that Men live by: so that it is no wonder if the later Authors and Councils (as Mr. *S.* shews *pag.* 175) follow the elder herein; for indeed it is both the truer and the older Opinion, that Personal, as well as Predial Tithes, are due by the Law of God, and so ought not to be subject to any Customs, especially not to such as cut them quite off.

(*q*) Scholast. Histor. in *Gen.* cap. 26.

(*r*) Registr. *Rossense*, An. 1425.

(*s*) Hist. *Tithes*, Ch. 7. p. 174.

(*t*) Ib. p. 163.

(*u*) Ib. p. 152.

(*w*) Ibid. p 97.

§. IV. The rest of this Chapter is an account how the modern Secular Laws, Customs, and Practice of divers Countries, have opposed the ancient and approved Opinion of the Divine right of Tithes, concerning which we shall not dispute the matter of Fact with Mr. *S.* in his own Profession; but supposing all he saith in this matter be true, it will not follow, either that the Divine right of Tithes is a false Opinion, or that these Customs of later Ages

Ages are sufficient to direct or secure any mans Conscience, when there is so great proof that the Truth lies on the other side. There are many things to which Conscience obliges us, though Secular Laws leave us free; and many things are evil and unjust, which no humane Law either forbids or punishes. *The Rule of our duty* (saith *Seneca*) *is much larger than that of the Laws; how many things do Piety, Humanity, Liberality, Justice and Fidelity oblige us to, that are not in the publick Statutes* (x). *The Laws of our Courts are one thing, and the Law of Heaven is another* (y). Cæsars *Laws and Christs are different*, Papinian *enjoyns one thing and S.*Paul *another* (z). *Grotius*, who was himself a Lawyer, and understood the Laws of all Nations as well as any Man in this Age, gives many instances wherein the Civil Laws of divers Kingdoms, are contrary to equity and the Law of God (a); and, *There are many things* (saith *Cicero*) *which we ought not to do, though the Laws permit us* (b); and therefore to argue from Humane Constitutions, that a thing is right in point of Equity and Conscience, is no good reasoning: for indeed evil Customs are many times so universal, and so rooted, that the best Legislators dispairing to root them out, are forced to make their Laws bend to them; even *Moses* himself (by Gods permission) was forced to allow Divorces to the *Jews*, because of the *hardness of their hearts*, and to *give them Statutes which were not good*, Ezek.xx. 25. And not only he, but all the Lawgivers of the World, if they were asked, Whether their Laws were the best that could be devised, must answer, *Not simply the best, but the best that the circumstances would allow* (c). When a Vice grows general, and the Offenders are great Men, it is hardly safe to make strict Laws against it, as *Tiberius* observed of the sumptuary Laws at *Rome*, which some would have revived, *I know not whether I should perswade you rather to let alone strong and overgrown Vices, than to get this by making Laws against them, to make it publick, what Crimes are too hard for us* (d). He must be a great stranger to the World, who knows not how easily an ill thing grows into a custom, and how easily afterwards

(x) *Sen.* de ira, l. 1. c. 26.
(y) *Augustin.* hom 49.
(z) *Hieron.* Epitaph. Fabiolæ.
(a) *Grotius* de jure belli & pacis. l. 3. c. 2. §. 2.
(b) *Cicero* pro *Balbo.*
(c) *Origen* in *Celsum* l. 3.
(d) *Tacit.* Annal. l. 3.

wards interest will pass that into a Law: so that to think every thing right that was setled by Custom and humane Law, is a great Error. *We should ever prefer that which is just before that which is the Custom*, saith *Synesius* (*e*); for Truth (as *Tertullian* speaks) is of that nature, that no prescription can hold against it, no length of time, no eminence of Persons, no priviledge of Countries (*f*). *Isidore Peleusiota* adds, *We must not judge of the goodness or badness of any thing meerly by the time of its continuance —— for he that prefers Custom before Equity shall involve himself in a thousand wickednesses* (*g*); and if that every Law that arises from an evil Custom could make a false Opinion true, or an ill Practice good, we might say with *Seneca*, *With us Error made public stands in the place of Truth* (*b*). We have shewed there were of old good Laws both Civil and Ecclesiastical, and the general opinion and practice of the best sort of men, contrary to these Customs, which Mr. *S.* here relates. And these Customs had their rise from the malice of the Devil, as King *Edward*'s Laws speak (*i*), from the Covetousness (*k*), and wickedness of the Laity (*l*), and the solly and negligence of the Clergy (who betrayed the Churches rights to ingratiate with great Men) contributed to establish them; so that if there be such Laws and Customs in any Country, as oppose the Divine right of Tithes, they are not to be urged as a proof of right; and therefore we shall briefly pass them by with some short notes on the particulars. *Pag.* 178. There were in *France* good Laws, Civil as well as Ecclesiastical, to oblige all Tithes to be restored to the Church, and their Lawyers (who should best understand this matter) do affirm, that all Infeodate Tithes in *France* first came from the Church, for which cause the Clergy there owe it to their Predecessors ill management, that these Lands pay no Tithes parochially. And *pag.* 181. The School-mens Doctrine helpt those that possessed them to a plausible excuse, why they should not restore them. *Pag.* 183. The Customs, *De non Decimando*, it seems were sometimes allowed in *France*, and sometimes not, according to the Judges opinion (perhaps, Interest) before

(*e*) *Synes.* Epist. 57. pag. 201.

(*f*) *Tertul.* de veland virgin.

(*g*) *Isid. Peleus.* l. 2. ep. 46.

(*b*) *Senec.* Epist. 123.

(*i*) *Spelm.* Concil. Tom. 1. p. 620.

(*k*) *Alcuinus* ap. *Seld.* p. 71.

(*l*) *Ludovicus* ap. *Seld.* p. 177.

before whom the cause lay; but Mr. *S.* ought not to call the disallowing this bad Custom, *a usurpation of the Canons upon the Secular Law*; for these modern Secular Laws and Customs had rather usurped upon the old Civil Laws and Canons too, and when the juster and ancienter Laws took place, it cannot be called Usurpation.

§. VII. *Pag.* 184. He confesseth, that the Tithes which are in the Crown of *Spain*, or that have been infeodated by those Kings, were granted by the Pope, and that *Cum onere dotandi Ecclesias*, on condition to endow the Churches other ways, which was indeed an unfit exchange, but not plain robbery; and still those infeodate Tithes retain the marks of their coming from the Church, since divers of the *Spanish* Lawyers hold, that the connisance of them belongs only to the Spiritual Jurisdiction. *Pag.* 186. And it is but, *quandoque*, sometimes that these Causes are tried before the Kings Judges, and it's likely but of late years, for the oldest instance Mr. *S.* can bring is dated but *An.* 1525; for there were not only Canons, but Civil Laws also in that Country, (*pag.* 185) which decreed on the Churches side, though evil Customs it seems bore them down there, as well as elsewhere. *Pag.* 188. That Infeodation of the Tithes belonging to the Family of the *Mutii* at *Piacenza*, was probably derived from the Church, because it was confirmed by the Pope. The Ordinance of the Emperor *Frederic* (which I cited before §. 3.) clearly declares Tithes are due by the Law of God, and this passage cited by Mr. *S.* owns them due to the Churches; and the reason why they are appointed to be paid in such manner as they were in the time of King *William*, is because they were then well and generally paid. *Pag.* 190. The Council of *Lateran* indeed speaks of some Foreiners mingled among the Nations about *Italy*, who pretended Customs of Non-payment; but the Canon saith, *They scarce deserve the name of Christians*, and enjoyns them, contrary to so wicked a Custom, to pay Tithes according to the Law of God, and the Custom of the Western Nations: and if

theſe mixt People were *Greeks* and *Armenians*, yet ſurely the Law of God, and uſage of all Weſtern Nations, ought to prevail over their evil Cuſtoms; but we have proved before, that the *Greeks* did pay Tithes of old, and therefore it is not likely to be meant of them. *Pag.*191. The liberty of Non-payment of Tithes of waſte-grounds in *Poland* for 30 years, was granted by the Biſhop of *Cracovia*, and he that hath a right, may abſtain from uſing it in ſome caſes and for ſome time, if he pleaſe. *Pag.*192. As for *Scotland*, I appeal to the Hiſtory of that Church to ſhew by what ill practices (in the hurry of a Reforming humor) Tithes were taken from the Church there, and how much Mr. *Knox*, and other Adviſers of that project, repented thereof when it was too late. *Pag.*193. But the ſtrangeſt thing of all this Chapter is, that Mr. *S.* ſhould confidently produce a late confirmation (by *Robert Bruce* (afterward King of *Scotland*) *An.*1290) of an old ſettlement of ſome Churches on a Monaſtery; as if it were an inſtance of an Original Appropriation made by a Lay-man long after the *Lateran* Council: whereas the *Monaſticon* will inform us, theſe Churches were appropriate to that Monaſtery by the Anceſtors of this *Robert* 140 years before; and this Charter which Mr. *S.* cites is nothing but a confirmation of former Grants. Theſe Churches were firſt aſſigned to the Priory of *Giſeburn* by the Son of the Founder *Robert Bruce*, Lord of *Anandale*, *circ. An.*1150; and the old Biſhops of *Durham* had appropriated ſuch of them as were in that Dioceſs to theſe Monks of *Giſeburn*, as appears by a Charter in the *Monaſticon* (*m*): and it is likely the Biſhop of *York* had appropriated the reſt, though the Charter be not extant, becauſe Sir *Robert Bruce*, Father of this *Robert* Lord of *Anandale*, and Founder of this Priory, declares, he founded it *by the admonition and counſel of Pope* Calixtus, *and* Turſtan *Archbiſhop of* York (*n*) *An.* 1124. ſo that as the Father had Eccleſiaſtical conſent, ſo no doubt had the Son alſo. But this *Robert* Lord of *Anandale*, the Second of that name, was Father of *William Bruce*, and he Father of *Robert* the Third (whoſe Charter of Confirmation to theſe very

(*m*) *Anglican.* Tom.2 p.152.

(*n*) Ib. p.147.

very Churches is yet extant (*o*)), which *Robert* the Third was Father of *Robert* the Fourth, and the Father of *Robert* the Fifth, who by the Daughter and Heir of the Earl of *Carrett*, had *Robert Bruce* (the Sixth of that name) who made a Confirmation of his Predeceſſors Grants; and of thoſe Churches by name, which were given 140 years before by his Anceſtors, and this is the Charter (dated *An.* 1290) which Mr. *S.* very honeſtly cites for an Original Appropriation, and for ſuch it might paſs with Readers that rely on Mr. *S.* his integrity without examining; but I aſſure them 'tis dangerous to follow ſuch a guide, for upon ſuch miſtakes are moſt of his Arbitrary Conſecrations and Lay Appropriations founded, as we will ſhew in the Eleventh Chapter.

(*o*) Monaſtic. p. 152. circ. An. 1200.

CHAP. VIII.

Of the Engliſh *Laws for Tithes.*

§. I. THE Laws and Practice of *England* in point of Tithes were put by themſelves, becauſe they chiefly concern us, and becauſe they are fuller and were better obſerved than in moſt other Nations; but Mr. *S.* begins too late, omits many, and diſcredits ſome of thoſe he produces, wherefore for the perfecting this Collections of Laws we will add what is wanting, and vindicate what is unjuſtly diſparaged with all the brevity we can. If we look back to the firſt Converſion of the *Saxons*, it will appear very probable that Tithes were paid among them as ſoon as Chriſtianity it ſelf was ſetled; for in the Laws of King *Edward* the Confeſſor, after the enumeration of all kind of things whereof Tithes are

are to be paid, it is ſaid, *Hæc enim prædicavit B.* Auguſtinus, *& conceſſa ſunt à Rege, baronibus & populo* (p), and an old Manuſcript of theſe Laws hath this Marginal Note there, *Of the preaching of S.* Auguſtine *the Apoſtle of* England: And this very *Auguſtine* the Monk, is called S. *Auguſtinus* in ancient Record (q); ſo that it is very likely this is meant of the preaching of *Auguſtine* the Monk, and the Grant of King *Ethelbert* his Barons and People, *An.* 600. for neither did the Father S. *Auguſtine* preach for the payment of all the particulars there enumerated, nor can his preaching many hundred years before be well applied to the Grants of any of our *Saxon* Kings. Nor is it unlikely, that Tithes were paid here in *Auguſtines* time, becauſe he came from *Italy* and *France*, where we have ſhewed they were well paid long before; and we have noted, that *Rupertus*, the Apoſtle of the *Bavarians*, perſwaded that People to pay Tithes above 60 years before the Converſion of *England*; yea an old Hiſtorian relates, *That a certain Fiſherman, who lived in S.* Auguſtines *time, conſtantly offered the Tithe of his Fiſhing to the Church of S.* Peters, Weſtminſter, *and obliged his Heirs to do the ſame, which they had continued to do till the days of* Edward *the Confeſſor* (r). Since therefore Tithes were then paid, it is very likely there might be a Law made for it, and 'tis probable, that Law of King *Ethelbert* againſt the taking away *res Eccleſiæ*, (or as it is in *Saxon*) *Gods Fee* (s), muſt be expounded of Tithes alſo, which the *Saxons* uſually called *Gods Right*, or *Gods Fee*. But it is certain, that Tithes were ordinarily paid here about 140 years after; for *Boniface*, Biſhop of *Mentz*, in his Epiſtle to the Archbiſhop of *Canterbury* expreſly ſaith, *The Clergy here did receive the Wool and Milk of Chriſts ſheep, in the daily Oblations and* Tithes *of the Faithful* (t); and if it were ſo general and uſual then, the Practice muſt needs have begun long before. And upon this ground, the Laws of King *Ina* for paying the *Cyric-ſceat*, *An.* 692 (u); thoſe of King *Withred*, forbidding Lay-men to poſſeſs *Things anciently given to God*, *An.* 694 (w), and enjoyning, that the Church ſhould *have its Revenue*, *An.* 697 (x): As alſo the Charter of King *Ethel-*

(p) *Spelm.* Concil. T. 1. p. 620.

(q) *Lambard. Archaionom.* p. 137.

(r) *Ailredus Rieval.* vit. *Ed.* Confeſſ. l. 1. col. 386.

(s) *Bed.* hiſt. l. 2. c. 5 p. 62. *Spelm* Concil. T. 1. p. 127. An. 610.

(t) *Boniface* ad *Cuthbert* Ep. 105. ap. *Seld.* p. 66. An 750.

(u) *Spelm.* Concil. T. 1. p. 181.

(w) Ib. p. 189.

(x) Ib. p. 194.

Ethelbald, *That the Servants of God* (ſo the Clergy were then commonly called(z)) *ſhould have their proper liberty in the Profits of the Woods, the Fruits of the Fields, and of Fiſhing*, *An.*749 (*a*). All theſe I ſay may very reaſonably be expounded of *Tithes*, which undoubtedly were paid to the Church in that Age.

(z) *Spelm.* gloſſ. verb. Parliamentum. *Selden* Hiſt. *Tithes*, p.215.

(*a*) *Spelm.* Concil. T.1.p.264.

But the firſt Laws now extant which mention them by name, are the Canons collected by *Egbert*, Archbiſhop of *York* (Brother to *Eadbert* King of *Northumberland*) *An.*750. in the very time of *Boniface*, Biſhop of *Mentz*, the Fourth of which Canons *Commands the Prieſt to teach the People how to pay Tithes*: The Fifth *appoints him that receives them, to keep a Regiſter of the Names of ſuch as paid them, and to divide them according to Canonical Authority before Witneſſes.* The 24*th* forbids taking *Tithes* from ancient Churche: The 25*th*, That Prieſts ſhould do no Secular ſervice for *Tithes*: The 99*th* is the Precept of *Moſes* Law; and the 100*th*, the Sayings of S. *Auguſtine* for Tithes. This being ſo full and ſo ancient Authority, Mr. *S.* labours by all means to diſcredit it: Firſt, *Becauſe ſome of theſe Canons are the ſame ſyllables with the* French *Capitulars*, *made* 30 *years after* Egberts *death* (*b*). To which I reply, That though it be ſo in ſome few of them, yet there is no reaſon to ſuſpect theſe Collections taken out of the *Capitulars*, but great cauſe to believe the *Capitulars* were taken out of theſe Collections; for *Alcuinus*, Tutor to *Charles* the Great, who adviſed and aſſiſted in the making of the *French* Capitulars, was *Egberts* Scholar; and when this *Alcuine* was to collect matter for the *Capitulars*, *Malmsbury* tells us, he writ to *Charles*, *That he might have books of exquiſite Scholaſtical Learning, ſuch as he had in his own Country, by the pious and devout induſtry of his Maſter.* Egbert, *the Archbiſhop*——*and that the King would ſend ſome Youths into* Britain, *to bring into* France *the choice Collections that were there* (*c*). And the ſame Author there deſcribes *Egbert*, *as a Magazine of all liberal Arts, a great Lover and Collector of Books, having ſet up a moſt noble Library at* York. Which makes it very plain, that *Charles* the Great had a Copy of theſe Collections before he made his

(*b*) Hiſt. *Tithes*, Ch.8.p.197.

(*c*) *Malmſ.* de geſt. Pontif. l.3.pag.153.

his *Capitulars*, and therefore it is no wonder if the very words of theſe Canons be tranſcribed there. Secondly, Whereas the Fifth of *Egberts* Canons ſpeaks of, *dividing Tithes according to Canonical Authority before Witneſſes*: Mr. *S.* objects, *That there was no Canonical Authority for dividing Tithes before Witneſſes, till an Imperial made in the* 11th *year of* Charles *the Great, long after* Egberts *death* (*d*). But Mr. *S.* groſly miſtakes this Imperial, for it only appoints, *That if any difference ariſe between the Prieſt and his Pariſhioner, whether Tithes were paid or no, Four or Eight honeſt men ſhall be choſen, to witneſs between the Prieſt and People, whether the Pariſhoner did give his Tithes or no* (*e*); but this is nothing at all to that Canonical diviſion of Tithe (already received) into four Parts, which *Egberts* Law ſaith, is to be done before Witneſſes. The *Imperial* ſpeaks of Witneſſes between Prieſts and People at the paying of Tithes; but *Egbert* treats of Witneſſes, to ſee that Prieſts rightly diſtributed the Tithe already paid; which ſhews the impertinency of this allegation, and Mr. *S.* his deſire to feign ſeeming Objections when he wants real ones: Which ill dealing of his will ſtill be plainer when we obſerve, there was good Canonical Authority before *Egberts* time for thus dividing, Tithes received, before Witneſſes. The Council of *Antioch*, *An.* 341, orders, *That the Biſhop do make the Prieſt and Deacons acquainted with the Goods of the Church, and do not diſtribute them without their knowledge* (*f*). Pope *Gelaſius* alſo had decreed, *That the diſtribution ſhould be atteſted by the notification of Witneſſes preſent at it*, *An.* 494 (*g*). Another old Council had appointed, *The Biſhop ſhould do it in the preſence of the Prieſts and Deacons according to Canonical Inſtitution*, *An.* 541. (*h*). Wherefore this was a thing enjoyned by the Canons long before *Egberts* time. and we may conclude both, that theſe Canons were the genuine Collections of *Egbert*, and that they are good proof, that Tithes were paid here by virtue of theſe Canons as anciently as the year 750.

(*d*) Hiſt. *Tithes*, Ch. 8. p. 198.

(*e*) Edit. vit. *Amberbach.* c. 7. Leg. *Longob.* lib. 3. tit. 3.

(*f*) Concil. *Antioch.* Can 24.

(*g*) *Gelaſ.* Ep. l. 1. c 29.

(*h*) Concil. *Arvern.* ap. *Bin.* T. 2. p. 2. pag. 32.

§. II. The

§. II. The next Law is the 17*th* Canon of the great Council of *Calcuth*, *An.*787; where, after the Precept of *Moſes*, and the place of *Malachy* related, "All men are "earneſtly preſſed to take care to pay Tithes of whatever "they poſſeſſed, becauſe it is Gods ſpecial part, therefore "they muſt live on the Nine parts, and give Alms out of "them (*i*). Mr. *S.* grants, this is a moſt obſervable Law being made with ſuch ſolemnity by both Powers of both States, and thinks it was made general to all *England*, if it be of good Authority (*k*): But he can give no reaſon why it ſhould not be genuine, and he himſelf anſwers all his own Objections, and concludes, *pag.*202, "It cannot "be ſuſpected by any circumſtance in the Subſcriptions, "which being ſo many, might have by chance ſoon got "among them a Character of Falſhood, had it not been "genuine. Wherefore we will take this for another Authentic Law for Tithes, *An.*787. and though the very Syllables of this Council are found in the Conſtitutions of *Odo* Archbiſhop of *Canterbury*, *An.*943, yet that is no more than uſual, *viz.* for later Decrees to repeat the words of elder Councils, when there was occaſion to revive an ancient Canon. And it doth ſhew, that the giving Tithes was now held a piece of Religion in this time, in that King *Offa* gave the Tithe of all he poſſeſſed to the Church, *An.* 793 (*l*).

(*i*) *Spelm.* Concil. Tom. 1. p. 298.
(*k*) Hiſt. *Tithes*, Ch 8. p. 201.
(*l*) Hiſtor. *Jorvalenſ.* col. 776. *Polydor. Virgil.* hiſt. *Angl.* l. 4.

§. III. I know not for what reaſon Mr. *S.* here puts the Son before the Father, and the Year 878 before 858; but we muſt rectifie the order, and begin with the famous Charter of King *Ethelwolph*, the firſt hereditary ſole Monarch of the *Engliſh Saxons* reigning peaceably, and ſo the Firſt who could make a general Law to bind the whole Kingdom to pay Tithe, which by Canons and particular Laws of ſome Provinces was paid in many places before. As for this Law, it was made in a General Council of the whole Kingdom, or (as Mr. *S.* ſpeaks) *by the Parliamentary conſent of that time*; and ſince it is too much to cite at large; we will take Mr. *S.* his account of it, who ſaith, "The pur-

"poſe of the Charter was to make a general Grant of "*Tithes*, payable freely, and diſcharged from all kind of "Exactions uſed in that Time ——— ſo that the Tithes of "predial and mixt Profits was given, it ſeems, perpetually "by the King, with the conſent of his States both Secular "and Eccleſiaſtic; and the Tithe of every Mans perſonal "Poſſeſſion were at that time alſo expreſly included in the "gift (*m*). This therefore is ſo clear Evidence, and ſo great Authority, that there is nothing more need be added, but briefly to note, that Mr. *Fox* doth unjuſtly contract the ſenſe of this Royal Law, as if it were a donation of Land only, and a particular Conſecration to the Church of one time (*n*); for as Mr. *S.* rightly notes, the words of many Hiſtorians cannot be ſo interpreted, who ſay, "He en-"dowed the whole Church of *England* with Tithes (*o*); "He tithed all his Poſſeſſion for Gods part, and appointed "it ſhould be ſo done all over his Kingdom (*p*); He tithed "his whole Kingdom (*q*). And if ſome of them call it giving the Tenth part of his Land, they mean by *His Land*, his Kingdom, and uſe the Tenth part for the Tithe, or Tenth part of the Profits, for ſo we muſt underſtand, *He Tithed his whole Land for the uſe of the Church* (*r*); *He Tithed his whole Land amd gave it to the Church* (*s*); *He gave the Tithe of all the Hides in his Kingdom to Gods Servants, free from all burdens* (*t*). And let it be obſerved, that it was ſo well known then, that theſe Sacred Revenues ſhould be diſcharged from Secular ſervice, that ſome Authors make it all one to ſay, *He freed the Tithe, or Tenth part, from all Service for ever* (*u*), and to ſay, he gave it for ever to the Church. And whereas Mr. *S.* would perſwade us, that the payment of Tithes before *Ethelwolphs* time had commonly been omitted, becauſe *Ingulphus* ſaith, *Then he firſt endowed the Church with Tithes, &c.* I reply, That this was the firſt time *Ethelwolph* made ſuch a Grant, and the firſt general Grant *to the whole Church of* England; *Ingulphi ibid.* but the forecited proofs ſhew, Tithes were generally paid long before, in divers parts of *England*; and it is like that *Ethelwolphs* Journey through *France*, and his mar-

(*m*) Niſt. *Tithes*, Ch. 8. p. 207.

(*n*) apud *Seld.* p 208.

(*o*) *Ingulphus*, p. 491.

(*p*) *Ethelwerd.* p. 478.

(*q*) *Simeon Dunelm.* p. 840.

(*r*) *H. Hunting.* l. 5. p. 200.

(*s*) *Hoveden*, Annal. par. 1. pag. 231.

(*t*) *Malmsb.* l. 2. c. 2. p. 20.

(*u*) *Ingulphus*, pag. 491. *Florent. Wigorn. Seld.* 205. *Radulphus de Dicto*, A. 849. *Malmſ.* p. 22.

marrying that Kings Daughter (where Tithes were ſo ſtrictly eſtabliſhed by Law) might occaſion his making this general Law, which was confirmed by almoſt every one of his Succeſſors.

§. IV, and V. King *Alfred*, his Son, when he made the League with *Guthran* King of the *Danes*, *An.* 878. made a Law to lay pecuniary Mulcts on all *Engliſh* or *Danes*, who ſhould detain or forhold their Tithes, the *Dane* being to forfeit Twenty ſhillings, and the *Engliſh* man, Thirty (*w*); which ſhews, that *Ethelwolphs* Law was both ſpeedily and generally put in execution, ſince within twenty years after it was made, ſo large a Fine was ſet upon the breach of it, though it were by one of the *Danes*, as yet but lately converted to the Faith. Again, about the year 900 this ſame Law was renewed between King *Edward* (Son to *Alfred*) and the ſame King *Guthrun* (*x*). The Church Laws alſo collected about the time of this King *Edward*, *An.* 900. called *Statuta Synodorum*, cited at large by Mr. *Selden* (*y*), reckons Tithes are due to the Church by the Law of God; and we may obſerve, that this Collection cites the Fifth of *Egberts* Canons (of which we ſpoke before) with this Preface, *Lex dicit*; which ſhews, that thoſe Canons of *Egbert* were ſo far from being collected about the year 900 (as Mr. *S.* ſuggeſts) that it is a plain proof, they had been long received into practice, and were looked upon as Authentic Laws in this time.

(*w*) *Spelm.* Concil. T. 1. p. 377.

(*x*) *Spelm.* ibid. pag. 392.

(*y*) Hiſt. *Tithes*, Ch. 8. §. 5 pag. 210.

§. VI. King *Athelſtan*, Son of *Edward*, as Mr. *S.* notes, *by the conſent of his Biſhops made a general Law for Predial and Mixt Tithes* (*z*) *An* 930. commanding they ſhould be given to God, and that all his Judges and Officers ſhould ſee this Law well executed by all both great and ſmall (*a*). Which Command was ſo well received, that *Jorvallenſis* ſaith, "The Nobles, Gentry, and Commons of *Kent*, re- "turned humble Thanks to the King for all his Laws, and "particularly for this of *Tithes*, to obſerve which they were "very forward and willing (*b*).

(*z*) Hiſt. *Tithes*, Ch. 8. p. 213.

(*a*) *Spelm.* Concil. T. 1. p. 395. Hiſtor. *Jorval.* col. 840.

(*b*) *Jorval.* hiſt. col. 850.

§. VII. King *Edward*, Brother and Succeſſor to *Athelſtan*, in a general Parliament of Clergy and Laity at *London*, *An.* 940. makes anothe Law, *Charging all Chriſtian Men upon their Chriſtianity to pay their Tithes, and thoſe who neglect it are declared accurſed* (*c*). Which ſhews, how highly this Duty was then eſteemed, ſince the neglecters of it were ſuppoſed to renounce their Chriſtianity, and by a general Law were condemned to be Excommunicated. As for the *Cyric-ſceat*, or *Menſura bladi* (not *tritici*, but) *triturati*, *du bleé batu*, in *Fleta* (*d*), which that Author ſaith was paid to the Church even from the time of the *Britons*, it may not be improbable, it was a ſort of Tithe at firſt, if the Meaſure varied, according to the proportion of the Crop; but afterwards, when a regular Tithe was paid, this ſeems to have been retained as a kind of Firſt-fruits of the Threſhing-floor, and was paid beſide the Tithe.

(*c*) *Spelm.* Concil. T. 1. p. 420. Hiſtor. *Jorval.* col. 858.

(*d*) *Fleta* l. 1. c. 47.

§. VIII. About the ſame time, in this King *Edmunds* days, *Malmsbury* tells us there was *Synodale Concilium*, an Eccleſiaſtical Council, wherein *Odo* Biſhop of *Canterbury* renewed certain Decrees, which he found among the ancient Precepts of famous Men that had been before him; and the Tenth of theſe Conſtitutions, is *concerning Tithes*, in the very words of the Council of *Calcuth*, (cited before, §. II.) out of which it is plain *Odo* had taken it, and therefore Mr. *S.* need not wonder, why it ſhould be in the ſame ſyllables.

§. IX. King *Edgar* was Son to *Edmund*, who in a full Aſſembly (as Mr. *Lambard* ſpeaks,) and by the advice of his Wiſe men (as Mr. *S.*) made Laws for Tithes *An.* 967; but Mr. *S.* omits ſome paſſages, which *Jorvallenſis* and *Lambard* both remember, and we will ſupply; the ſum of theſe Laws are, 1. "That the Church ſhall have all her rights, "and that all Tithe ſhall be paid to the Mother Church in "whoſe Pariſh a man lives. 2. Only, if a Lord have a "Church with priviledge of burial, on his own Free-land "he may give the third part of his Tithes to it; but if it "have

"have not priviledge of burial, the Lord of the Soil muſt "maintain the Prieſt out of his Nine parts. 3. The Tithe "of young Cattel muſt be paid at *Whitſuntide*, and of the "Earths-fruits before the middle of *September*, the Firſt-"fruits of Seed at *Martinmas*, and the Neglecters ſhall be "puniſhed, as is declared in the Book of Penalties. 4. If "any Tithe not thus, the Kings Officer, with the Biſhop "and Prieſt of that Church, ſhall force him to reſtore the "Tenth to the Church to which it is due, leaving him on-"ly the Ninth part, and the other Eight ſhall be given, "half to the Lord, and half to the Biſhop, whether he be "the Kings Tenant, or a Barons (*e*). Which is a full and clear Authority for Parochial payment as can be; and the Penalties on Offenders are ſo ſevere, that we need not doubt of its being obſerved. In this Kings time alſo were certain Canons made in the Province of *York*, entituled *Laws for the Prieſts on the North of Humber*, the 51 Canon whereof declares, ſeveral Fines were ſet upon the detainers of Tithes, according to the quality of the Perſon, the Kings *Thain* being to pay Ten Nobles, the Lord of a Mannor Six Nobles, and the Farmor Twenty Shillings for this offence, as *Spelman* notes (*f*); but this Mr. *S.* omits.

(*e*) *Spelm.* Concil. T. 1. p. 444. Hiſt. *Jorval.* col. 871.

(*f*) *Spelm.* Concil. T. 1. p. 501.

§. X, XI. King *Ethelred*, Son of King *Edgar*, in a general Council or Parliament at *Enham*, *An.* 1009. made Laws alſo for Tithes. (the *Saxon* Copy of which is the beſt Edition) "Enjoyning every man truly to pay Gods rights every year, "*viz.* The Plough-Alms within a fortnight after *Eaſter*, "Tithe of young Cattel at *Whitſuntide*, of the Fruits of "the Earth at *All-Saints* (*g*). There is alſo another Law made by this King and his Wiſe men at *Haba*, *An.* 1012. "Commanding the *Thayn* to Tithe all that he poſſeſſeth, "and enjoyning all Men by the love of God to pay their "Firſt-fruits, and their full Tithe in ſuch manner as when "it was beſt paid in the days of former Kings, that is, the "Tenth acre which the Plough goes over; and that all "dues be paid to the Mother Church to which they ad-"joyn, and that no man preſume to take away that which

(*g*) Ibid. p. 513. & 525.

"is

(*h*) Hiſt. *Forval.* col. 901, 902. *Spelm.* Concil. T. 1. p. 530, 531.

"is Gods right, and which the Kings Anceſtors had given "to the Church (*h*).

§. XII. King *Canutus* repeated the former Law of King *Ethelred* at *Enham*, in a General Council at *Wincheſter*, *An.* 1020 (or rather 1032) preſcribing the ſame penalty on Offenders as King *Edgar* had done, §. IX (*i*); and Mr. *S.* rightly obſerves, theſe are thoſe Laws which are properly called *Leges Anglia*, "To the obſervance whereof (as *Malmsbury* tells us) "our Kings, after the Conqueſt, did "frequently Swear under the name of King *Edwards* Laws; "not becauſe he made them, but becauſe he obſerved "them (*k*). And theſe are the Original of *Magna Charta*, the firſt Clauſe whereof gives the Church all her rights, and theſe Laws declare what were her rights in thoſe days, *viz. Tithes*, above all other Poſſeſſions, which therefore are now ſecured by *Magna Charta*. About this time (as *Spelman* informs us) were thoſe Canons collected, which *enjoyn the payment of Tithes, as a duty taught by the Holy Fathers, and directs the Diviſion of them according to the Old Canons* (*l*): And thoſe which *forbid any Prieſt to draw away anothers Pariſhioner, or perſwade him to give them his Tithe*: And further command, that *Tithe be paid by Merchants and Artificers of their gains, as well as of the Fruits of the Earth* (*m*).

(*i*) *Spelm.* Concil. T. 1. p. 544.

(*k*) *Malmsb.* de geſtis reg. l. 2. c. 11.

(*l*) Can. *Ælfrici* ad *Walſin.* Can. 24. *Spelm.* T. 1. p 578.

(*m*) Capitul. incerr. Cap. 14. & 35. *Spelm* ibid. p. 593, & 610.

§. XIII. King *Edward* the Confeſſor not only obſerved the former Laws, but made a new Law about Tithes, *An.* 1050, which ſaith, *Of all Corn, the Tenth Sheaf is due to God, and therefore to be paid*; and the Law doth particularly preſcribe the manner of paying Tithe of "Colts, "Calves, Cheeſe, Milk, Lambs, Fleeces, Pigs, Bees, Wood, "Hay, Mills, Parks, Warrens, Fiſhing, Orchards, Gardens, "and of all ſorts of Trades, yea of all that God gives; "it being reaſonable he ſhould have the Tithe, who gives "both the Nine parts and the Tenth. And if any be contumacious, this Law orders, *He ſhall be compelled to do his duty by the Power of the Biſhop and the King, for the Bleſſed* Auſtin *preached theſe things, and the King, Barons, and People*

People granted them (*n*). And thus ſtood the Laws for Tithes at the time of the Conqueſt.

(*n*) Leg. *Evard.* 8,9. *Spelm.* Concil. T. 1. pag. 620, 621.

§. XIV, XV. *William* the Conqueror, and his Succeſſors, frequently ratifying theſe ancient Laws, was inſtead of making new Civil Laws for Tithes, but ſtill there were divers Synodal Decrees concerning them: Mr. *S.* cites one made about the time of the Conqueſt, commanding, *That Tithe be paid of all that is poſſeſſed by Gods bounty* (*o*); and a little after a Council at *Wincheſter*, *An.* 1076, ſaith, *That all Laymen muſt pay Tithe according to the Scripture*, that is, (as another expounds it) *Tithe of all* (*p*). In the time of King *William Rufus*, *Malmsbury* remembers, it was decreed in the Council of *Clermont*, *That every Church ſhould have its own Tithe, nor ſhould it be paſſed to any other, nor might the Laity buy or ſell Tithes* (*q*), An. 1095.

(*o*) ap. *Seld.* §. 14. p. 225.

(*p*) *Seld.* p. 226. collat. cum *Spelm.* T. 2. pag. 12.

(*q*) *Malmsb.* de geſt. Reg. l. 4. c. 2. p. 74.

§. XVI, XVII. King *Henry* the Firſt enacted, by the conſent of his Biſhops and Barons in Parliament at *Weſtminſter*, *An.* 1102, *That Tithes ſhould be given only to the Churches* (*r*): And a Council of his Biſhops made a Decree, ratified by that King (which Mr. *S.* omits) *An.* 1127, "That Tithes "be fully paid as the Inheritance of the Moſt High God, "and we do by Canonical Authority forbid any Perſon to "give or receive any Churches or Tithes, or other Eccle-"ſiaſtical Benefice, without the conſent and Authority of "the Biſhop (*s*); which utterly overthrows Mr. *S.* his pretended Arbitrary Conſecrations about this time, and therefore he leaves it out; but he is ſo juſt as to tell us, this King made a Law, that his Officer, with the Biſhops and Lords of the Mannor, and the Prieſt of the place ſhould take away Nine parts from him, who would not pay the Tenth, as King *Edgar* had ordered before §. IX. (*t*).

(*r*) Cap. 13. *Spelm.* Concil. Tom. 2. p. 22.

(*s*) *Spelm.* ibid. p. 36. & Contin. *Florent. Wigorn.*

(*t*) Hiſt. *Tithes*, Ch. 8. p. 227.

§. XVIII. King *Stephen* allowed a Synod to be called at *London*, *An.* 1138. where, by the Popes Legate and our Biſhops, it was decreed, *That of every years increaſe full Tithe ſhould be paid, and whoever did not perform this ſhould be excommunicated* (*u*).

(*u*) *Spelm.* Concil. T. 2. p. 42.

§. XIX.

§. XIX, XX. King *Henry* the Second, after his Conqueſt of *Ireland*, gave his Royal aſſent to the Canons of a Council at *Caſſel*, *An.* 1172, one of which was, "That all the "Faithful ſhall pay the Tithe of their Cattel, Fruit, and "other Profits, to that Church of which they are Pariſhio-"ners (*w*). About this time alſo came thoſe two *Decre-tals* of Pope *Alexander* the Third into *England*, ordering "Tithes to be paid of Mills, Fiſhing, Hay, Wool, Bees, "and all Fruits, unto the Churches to which they were due, "under pain of Excommunication (*x*); but obſerve, theſe *Decretals* enjoyn no more than what was enacted in the Laws of King *Edward* the Confeſſor, §. XIII. A little after, in a general Synod at *London*, held in the preſence of both Kings, Father and Son, divers Canons of old Councils were confirmed by their Royal aſſent and made Laws here, particularly that Canon of the Council of *Roan*: "All "Tithes of the Earth, whether of Fruits or Trees, are the "Lords and ſanctified to him; but ſince many refuſe this "duty, we appoint that, according to the Popes Decree, "they be admoniſhed thrice to pay Tithes truly, of all "Grain, Wine, Fruits, young Cattel, of Wool, Lamb, "Butter, Cheeſe, Flax and Hemp, and other things yearly "renewing, and if they amend not upon the admonition, "let them be Excommunicated (*y*), *An.* 1175.

(*w*) *Spelm.* Concil. T. 2. p. 97.

(*x*) Decret. l. 3. Tit. 30. c. 5. & c. 6. p. 1327.

(*y*) *Spelm.* ibid. pag. 105. *Roger Hoveden* fol. 311.

§. XXI. King *Richard* the Firſt next followed, in whoſe time in a Provincial Council at *York*, *An.* 1195, it was declared, *That Tithes were due by Gods Law*, and decreed, *That due and accuſtomed Tithe be fully paid of all yearly renewing, and that Servants and Labourers be paid out of the Nine parts* (*z*).

(*z*) *Spelm.* ibid. p. 122.

§. XXII. In King *Johns* time, in a general Council at *London*, *An.* 1200, after the Examples of *Abraham* and *Jacob*, and the Authority of both Teſtaments alledged to prove Tithes of yearly increaſe due to God and his Prieſts; it was again decreed, *That no Wages be deducted before Tithe be paid, and that the Prieſts in Autumn ſhall excommunicate all defrauders of Tithes; and that new Tilled grounds ſhall*

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pay Tithes only to the Pariſh Church (*a*). A little after Pope *Innocent* the Third ſent a *Decretal* hither, *An.*1210, to *compel thoſe in the Dioceſs of* Canterbury, *who diſpoſed of Tithes to other Churches, to pay them to their own Pariſh Church, by Excommunication* (*b*). *Richard*, Biſhop of *Salisbury*, *An.* 1217, made a full Synodal Decree for Tithes alſo, to the ſame purpoſe with the former Canon of the Council at *London*, *An.* 1200, and almoſt in the very words of that which Mr. *S*, cites §.24 (*c*). And another very little different, was made ſoon after by *Richard*, Biſhop of *Durham*, *An.*1220 (*d*), which Canons were obſerved as Law in their own Dioceſſes: and this may ſuffice for his 23 and 24 Sections.

(*a*) *Spelm.* ibid. p.126.

(*b*) Ep decret. *Innocent.* 3. l. 2. p.452.

(*c*) *Spelm.* ibid. p.146.

(*d*) *Spelm.* ibid. p.171.

§.XXV. In the Reign of King *Henry* the Third, *Edmund* Archbiſhop of *Canterbury* renewed thoſe Canons about Tithe, which are related before §.XXI, XXII. *An.*1236; adding, *That no Lay-man can preſcribe* De non Decimando, *nor may deduct expences out of Predial Tithes*; *and that Pariſh Prieſts may deny the Sacrament at* Eaſter *to ſuch as detain their Tithes* (*e*). The former Decree alſo of *Richard*, Biſhop of *Salisbury*, was renewed again *An.*1237 (*f*). And in a Synod at *Worceſter*, *An.*1240, are divers Canons about Tithing *Lambs*, *Calves*, *Wool*, *Cheeſe*, and *Hay*, concluding with a Decree for Excommunicating offenders (*g*); all which are omitted by Mr. *S*. The Conſtitution of *Walter Grey*, Archbiſhop of *York*, which Mr. *S*. ſaith he had not the Copy of, is the very ſame with that which he attributes to *Robert Winchelſea*, and tranſcribes at large *pag.* 233, as may be ſeen in *Spelman* (*h*), it was made *An.*1250, and the ſum of it is, *To ſettle one uniform Cuſtom of tithing Hay, Lambs, Wool, Milk, Mills, Paſture, Fiſh-ponds, and all manual Arts*; concluding with an Order, *to excommunicate the Offenders after three admonitions, ſo as none but the Biſhop ſhall abſolve them*; *and to ſuſpend the Parſons if they do not proſecute*: And ſuch another Conſtitution there is, though ſomewhat larger, made by the Biſhop of *Salisbury*, *An.*1256 (*i*), omitted alſo by Mr. *S*.

(*e*) *Spelm.* ibid. p.207.

(*f*) Ib. p.237.

(*g*) Ib p.254.

(*h*) Ib. p.290.

(*i*) Ib. p.302.

§. XXVI. In King *Edward* the Firſts time, *Robert* Biſhop of *Durham* made a like Conſtitution to that of *Walter Greys*, but fuller as to the particulars, *An.* 1276 (*k*); and another as large as that, and as ſtrict, made in a Synod at *Exeter*, *An.* 1287 (*l*): Alſo one made by *Gilbert*, Biſhop of *Chicheſter*, for the full payment of Tithes, *An.* 1292 (*m*); all omitted in Mr. *S.* his Hiſtory. After theſe *Robert Winchelſea*, Archbiſhop of *Canterbury*, *An.* 1300, renewed the former Conſtitution of *Walter Grey*, and made it a Law for his Province alſo (*n*).

(*k*) Ib. p. 316.
(*l*) Ib. p. 391.
(*m*) Ib. p. 411.
(*n*) *Spelm.* Concil. T. 2. p. 431.

§. XXVII. In the time of King *Edward* the Second, and *Edward* the Third, there were divers Canons alſo made for Tithes; one very full Conſtitution in a Synod at *Wincheſter*, *An.* 1308 (*o*), and another made by *Richard* Biſhop of *Durham*, *An.* 1312 (*p*), both which declare, *Tithes are reſerved by God in token of his univerſal Dominion, and blame the Cuſtom of ſuch as expected Feaſts or Bribes from the Prieſts before they would pay their Tithes.* And the general Council held at *London* by *Simon Mepham*, Archbiſhop of *Canterbury*, decrees the very ſame things for the whole Kingdom, *An.* 1328 (*q*). The ſame Archbiſhop made another fuller Conſtitution for Tithes, and renewed the former Decree of *Walter Grey* and *Robert Winchelſea*, in a Council at *Mayfield*, *An.* 1332, which Mr. *S.* omits (*r*).

(*o*) Ib. p. 452.
(*p*) Ib. p. 476.
(*q*) Ib. p. 496.
(*r*) Ib. p. 502.

§. XXVIII. In King *Edward* the Thirds time alſo was that Council at *London*, under Archbiſhop *Stretford*, *An.* 1342. which condemns all ſuch as hindred the due taking of any kind of Tithes (*s*). In which Council alſo that Canon was made, which declares all Tithe to be due by the Authority of the Old and New Teſtament, and condemns thoſe who refuſed to pay Tithes of Wood cut down, on this pretence, that they had not uſed formerly to pay ſuch Tithe, notwithſtanding which pretence they excommunicate the Offenders. And though Mr. *S.* ſpends ſix or ſeven following Sections in recording the Complaints of the Commons in Parliament againſt this Canon, yet it appears

(*s*) Ib. p. 584.

pears by his own relation, that the King put them off for 27 years together, and at laſt yielded but in part, for he only exempted Trees of twenty years growth: And after all, the Clergy thought their claim ſo equitable, that they did not give it over for many years after; and this is all I need remark upon his 29, 30, 31, 32, 33, and 34 Sections: and for brevity ſake I ſhall now put what remains together.

§. XXIX. In King *Richard* the Seconds time, *William Courtney*, Archbiſhop of *Canterbury* and Legat of the Pope, made a large and full Decree for Tithes, *An.* 1393, in which all evil Cuſtoms of Tithing in a wrong manner, or *of deferring the payment, are condemned as contrary to the Law of God* (*t*). And in *Henry* the Fourths time, when the Commons would have been exempted from paying Tithes of Quarries, the King rejected their Petition as unjuſt (*u*); where by the way we may obſerve, that Mr. *S.* hath left out more than half of the Conſtitutions for Tithes ſince the Conqueſt, to make room for the complaints againſt Tithes, which he reports at large. Nor can this be excuſed by ſaying, theſe are only Eccleſiaſtical Laws, for he hath ſet down ſome ſuch, and withal that Age did generally leave the Duty of Tithes to be ordered by Eccleſiaſtical Canons, believing the Clergy beſt underſtood the practice of Ancient time in a point ſo nearly relating to Religion, and theſe Canons were of great force then; the Secular Power thinking it ſufficient to make general Laws, that the Church ſhould have all her Rights ſecured and inviolate: which is the true reaſon why we have more Canons, than Civil Laws for Tithes, ſince the Conqueſt. However theſe Canons were Confirmed by King *Henry* the Eigth, after he had caſt off the Popes Supremacy, *An.* 1536; and as Mr. *S.* confeſſeth, he by Act of Parliament commanded, *Tithes ſhould be paid according to the Eccleſiaſtical Laws of the Church of* England, *and laudable uſage of the Pariſh* (*w*). Ordering the Trials for them to be in the Biſhops Courts, and enjoyning the Civil Magiſtrate to exe-

(*t*) Ib. p. 644.

(*u*) Hiſt. *Tithes*, Ch. 8. p. 242.

(*w*) St. 27 H. 8. chap. 20.

cute the Sentence in caſe of Contumacy; and good reaſon, for the Preface of that Act declares, *They are due to God and Holy Church.* 'Tis true, upon the diſſolution of Monaſteries, the Lay-men who held Poſſeſſions formerly belonging to them, were to hold them diſcharged of Tithes, as freely and fully as the Religious Houſes had done before (*x*). But the Tithe of theſe Lands was firſt alienated by Eccleſiaſtical conſent, and ſtill Care was taken for due payment of Parochial Tithes (*y*); but of this more hereafter.

(*x*) St. 31 *H.* 8. chap. 13.

(*y*) Stat. 32 *H.* 8. chap. 7.

§. XXX. Thoſe Statutes of K. *Henry* the Eight, which order the Citizens of *London* ſhall pay a Tenth part of their Rent at leaſt, in lieu of their gains, which were uncertain and not eaſily known, declare, that it was then believed the Tithe of Tradeſmens gains were due to the Church, only this method was deviſed for Peace ſake. But whereas Mr. *S.* both in his Preface (*a*), and here (*b*), would perſwade us, that one Farthing for every Ten ſhillings rent, paid in *London* of old every Sunday and chief Holy-day, was all the Tithes formerly paid there. I muſt obſerve, that though this comes to above Two ſhillings a year for every Pound rent, yet the Citizens paid Tithes anciently beſides theſe Farthings; for theſe, *Lindwood* counts Oblations (*c*), which are a due beſides Tithes; and Doctor *Tildeſly* cites an Agreement between the Clergy and Citizens of *London*, made *An.* 1235, in the time of that *Roger Niger* Biſhop there (who Mr. *S.* thinks made this Ordinance of Farthings paying,) wherein it is declared, *That detainers of Tithes in* London *ſhall be excommunicated, and that three Sundays before* Midſummer *the Curate ſhall forbid any under pain of Excommunication, to carry away the Tithe of Fruits of Fields or Gardens, till they had firſt ſatisfied the Pariſh Church.* And it was *Simon Langham* Archbiſhop of *Canterbury*, *An.* 1366, who ordered the payment of theſe Farthings, or at leaſt renewed that payment; for upon a difference by him decided between the Citizens and Clergy, it was agreed, *That out of every Pound rent the Citizens ſhould*

(*a*) *Seld.* Pref. p. 8.

(*b*) Hiſt. *Tithes*, Ch. 8. p. 244.

(*c*) *Lindwood* conſt. de Decimis. c. *Sancta*, verb. *Negotiatione.*

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pay one Farthing (each Sunday and chief Holy-day, I ſuppoſe) *to their Prieſt, beſides Oblations* (for the Dead, perhaps) *and Perſonal Tithes (d).* All which makes it plain, that of old Tithes were paid in *London*, beſides theſe Farthings, whatever Mr. *S.* pretend to the contrary.

(d) *Godwin* de præſul. *Angl.* pag. 165.

§. XXXI. The Laws of *Edward* the Firſt give good Remedies againſt detainers of Parochial Tithes, but they allow ſome ſort of Cuſtoms further than can be juſtified by Men, who in the Preface to this Act declare, *Tithes are due to God*: for if ſo, no Cuſtom which defrauds God of that due, in whole or in part, ought to be allowed. And for that reaſon thoſe Eccleſiaſtical Canons, collected by Eight of our moſt famous Men of all Learned Profeſſions about that time, Two Biſhops, Two Doctors of Divinity, Two Doctors of Civil Law, and Two Common Lawyers, have declared, theſe Cuſtoms ought utterly to be abrogated; but ſince this Collection was never paſſed into a Law (which is much to be lamented) it only remains a Teſtimony of the Opinion of our moſt Judicious Perſons at the Reformation, concerning the payment of Tithes: And the Ingenious Mr. *Cowel*, of later time, hath declared himſelf of the ſame Opinion, as to the reaſonableneſs of abrogating all ſuch Cuſtoms as do leſſen the Tenth part due to the Church by the Law of God (*e*). But 'tis time to conclude this Chapter, which hath ſhewed, That *Tithes*, which God firſt taught, and inſpired Patriarchs paid, which were enjoyned under the Law, and not repealed, but required under the Gospel; which were held to be due by the Fathers, and paid by the Primitive Chriſtians, came in here almoſt as ſoon as Chriſtianity it ſelf, and began firſt to be paid of Devotion in obedience to Gods Law, and then by Cuſtom, and ſome humane Laws were confirmed, till at length, by a general Law and voluntary Donation of them throughout the whole Kingdom, with the conſent of the King and Three Eſtates, they were for ever Dedicated to the Church, and have been confirmed by innumerable Acts of Parliament, and Canons almoſt in every Kings

(e) *Cowel's* Interpreter in the word *Tithe.*

Kings Reign ſince, with ſevere Penalties on the Offenders. And by virtue of theſe Laws the Clergy have enjoyed them for above 800 years, adding *Preſcription* to all their other Titles; and ever ſince they have been a Collateral Eſtate, diſtinct from the Inheritance of the Land, ſo that no Purchaſor could, or did ever buy them, nor no Inheritor could, or ever did ſell them, or bequeath them to his Heir; nor can any but the Clergy by Law claim any Property in this ſort of Tithes, and therefore no Poſſeſſor now can be ſaid to give them out of his own, any more than he that pays an Ancient Free Rent, or Rent-charge, formerly given for ever to ſome Colledge or Hoſpital; for they are Gods part, and in his right legally ſetled on the Clergy, who do therefore now poſſeſs Tithes by as good a Title, as any Man in the Nation poſſeſſeth his own Inheritance, deſcending to him from his Anceſtors; and this may ſuffice for this Chapter.

CHAP. IX.

Of Pariſhes.

§. I. IF the diſcourſe of Lay Conſecrations had immediately followed theſe Laws to the contrary, it would have appeared too incredible even for an eaſie Faith; and therefore to amuſe the Reader, and divert his thoughts from theſe Conſtitutions, Mr. *S.* once more ſteps back into the Primitive Times, to enquire about the *Original of Pariſhes*, which diſquiſition doth not neceſſarily belong to the payment of Tithes, becauſe we have proved, Tithes were paid in the Primitive Church, when the whole Biſhopric was one great Pariſh as to the matter of Revenue,

Chap.

Chap.VI.§.3. Wherefore if the *Britons* had only ſuch Pariſhes among them, yet they might pay Tithes to their Biſhop, to be by him diſtributed among the Clergy, as it was done of old in other parts of Chriſtendom; and Mr. *S.* ſaith, *It is not likely that in thoſe times this Iſland ſhould differ therein, from what was uniformly received through thoſe parts of Chriſtendom whereof we have beſt Teſtimony remaining* (*f*). And if we conſider *France* alone, the neareſt Chriſtian Country to the *Britons*, and that with which they moſt converſed, it will be evident from the Council of *Maſcon*, that Tithes had been paid there long before, *An.*586; yea it is plain from the Teſtament of S.*Remigius*, *An.*470, that there were Pariſh Churches in *France* with Tithes belonging to them, called there *Eccleſias cum decimis & appenditiis* (*g*); and therefore there is no reaſon for Mr. *S.* to reckon it ſo unlikely that the *Britons* ſhould have Pariſh Churches endowed, *An.* 490, as the Manuſcript of *Landaff* (cited by him, *pag.*250) ſaith, they had; for before this S.*Germanus* and *Lupus* came out of *France* into *Britain*, and taught them, as *Giraldus Cambrenſis* ſhews, *To pay their Tithes partly to the Biſhop, and partly to their Baptiſmal Church* (*h*); and ſurely thoſe old and ruinated Churches which *Auguſtine* found in decay at his coming, and got leave to repair (as *Bede* ſhews (*i*)) were built by the *Britons*, and uſed before the *Saxons* came (*An.*460) but by theſe Pagan *Saxons* ſuffered to fall to ruine. In other Countries Mr. *S.* grants there were Churches *from the beginning of Chriſtianity*, and he proves it by 1 *Cor.*xi. 22. and by *Iſidore Peleuſiota* his mention of Churches adorned with Marble in his time (*k*), and why not in *Britain* alſo? He tells us, *Bede* mentions a Church built here in the time of the *Romans* (*l*), and that *Gildas*, *An.*580, ſaith, *The* Britiſh *Prieſts had Churches, which they went to for filthy lucres ſake*; wherefore doubtleſs they had Churches endowed then, or elſe how could their Avarice have expected ſuch ſatisfaction from thence? *Fleta* (cited before) aſſures us, the *Cyric-ſceat*, or Firſt-fruits of Threſhed Corn, was paid to the Churches in the *Britons* time; and ſince other Teſti-

(*f*) Hiſt. *Tithes*, Ch.9.p.249.

(*g*) *Flodoard.* hiſt. *Rhemenſ.* lib.1.cap.18.

(*h*) *Girald. Cambr.* deſcrip. *Camb.*cap.18.

(*i*) *Bed.*hiſt. l.1.c.26. p.30.

(*k*) *Iſid. Peleuſ.* l.2.Ep.246.

(*l*) *Bed.*hiſt. l.1.c.26.

Teſtimony declares they paid Tithes, either this quantity of Seed was paid in the proportion of a Tenth, or was paid beſide Tithes, as it was among the *Saxons* afterwards, and though the paucity of Writers of the *Britiſh* Church make it difficult fully to determine this, yet here is Evidence enough, the *Britons* had Pariſh Churches endowed, which is the thing Mr. *S.* would have denied.

§. II. For the Age of the *Saxons*, it cannot be expected that *Auguſtine*, when he came firſt to preach to Pagans, ſhould require more than voluntary Oblations, and therefore he and his Clergy for a while lived in common; but afterward King *Ethelbert* and he built and repaired many Churches (*m*), *Which* (Mr. *S.* ſaith) *doubtleſs had ſome kind of limits of adjoyning Villages or Towns* (*n*). And if ſo, there were Parochial Churches even in *Auguſtines* time, and that Tithes were then paid alſo (eſpecially in *Ethelberts* Kingdom) is made very probable before, *Chap.* VIII. §. 1. And that there were Pariſh Churches endowed with Tithes in other parts of *England* ſoon after, ſeems very plain, from that relation in *Beda*, concerning *Putta* Biſhop of *Rocheſter*, *An.* 677, who was driven from his Biſhopric and forced to retire into *Mercia*, *Where* Sexwulf *the Biſhop gave him the poſſeſſion of a certain Church, and a little Field beſide, whereon he ſubſiſted as long as he lived* (*o*). *Malmsbury* calls it, *Eccleſiam campeſtrem & agellum* (*p*); by which we ſee there were Country Churches then in *Mercia*, with Poſſeſſions belonging to them, beſides Fields, *i.e.* endowed with Glebe and Tithes, and this was not Twenty year after the Converſion of *Mercia* to the Faith, and about Fifty years after *Auguſtines* death. And if there were no Country Churches then ſeperately endowed, but the whole Revenue of the Dioceſs was paid to the Biſhop, whoſe Clergy lived with him on this Common ſtock, as Mr. *S.* affirms, how could this Country Church have any ſuch Poſſeſſion? and why did not *Sexwulf* retain this Reverend Confeſſor with him, and give him allowance out of the Common ſtock? And if there were Pariſh Churches endowed ſo early, then *thoſe Prieſts*

(*m*) *Bed.* hiſt. l. 1. c. 26.
(*n*) Hiſt. *Tithes*, Ch. 9. p. 252.
(*o*) *Bed.* hiſt. l. 4. c. 12. p. 163.
(*p*) *Malmsb.* geſt. Pontif. l. 2. p. 132.

Prieſts of the ſeveral Churches, who ought to teach the People, mentioned in the Council of *Calcuth*, *An.*786, were Curates reſiding at theſe Churches, and were ordained with a Title to them, as the Sixth Canon of that Council ſpeaks (*q*); and Mr. *S.* hath confeſſed Tithes were ordinarily paid here, by the Teſtimony of *Boniface* Biſhop of *Mentz*, *An.*750 (*r*), and alſo that Lay-men had built Churches on their Land for Prieſts to reſide at, *An.*700 (*s*); and therefore what reaſon is there for him to doubt of Curates reſident on Country Churches endowed, *An.*786? But he tells us out of *Beda*, *That when a Prieſt or Monk came into a Village, the People preſently uſed to flock about him, to beg his Bleſſing, and to hear the Word of God* (*t*), and hence he infers there were no Curates then reſident; but the fallacy lies in Mr. *S.* his concealing the Country, and the Time of which *Bede* ſpeaks, he ſaith this of *Northumberland*, in the time of *Colman* Biſhop of *Lindisfarn*, and in S. *Cuthberts* youth, *viz.* about the year 650, that is, within Thirty year after the Converſion of *Northumberland*, and it is no wonder if at that time Parochial Cures endowed, were but few in that Country; though they were ſetled long before in other parts of the Iſland, yet *Bede* in that *Colmans* time ſpeaks of Churches in *Northumberland*, to which the People reſorted on Sundays, and he expreſly ſaith, the Villages which S. *Cuthbert* viſited, where the People had this Cuſtom, were *Villages placed on ſteep and rough Mountains afar off, places which terrified others but to look on at a diſtance* (*u*). And now, what wonder is it, that in ſuch remote and inacceſſible Villages the preſence of a Prieſt was rare? will it follow hence, there were no Churches built and Prieſts reſident in the more habitable parts? The truth is, this is meer Sophiſtry deſigned to diſcredit the Antiquity of Pariſh Churches; but they are only thin Conjectures againſt plain proof: ſo that we conclude, though on the firſt Converſion of any Kingdom of the *Saxons*, things could not inſtantly be ſetled, yet within Twenty year after each Countries Converſion, there were ſome reſiding Prieſts at endowed Parochial Churches.

(*q*) Concil. *Calcuth. Spelm.* T. 1. 293, 295.
(*r*) Hiſt. *Tithes*, Ch. 5. p. 66.
(*s*) Ib. Chap. 9. p. 261.
(*t*) *Beda* lib. 3. cap. 26. & l. 4. c. 27.
(*u*) *Beda* ib. l. 4. c. 27.

§. III. That *Honorius*, Biſhop of *Canterbury*, *firſt divided all the Regions of his Province into Pariſhes, that ſo he might allot the ſeveral Flocks to ſeveral Miniſters to take care of them* (*w*), is affirmed not only by Mr. *Joſcelin*, but by our great Antiquary Mr. *Cambden* (*x*), and before him by the Archbiſhop *Parker*, as alſo by Biſhop *Godwin*; and as Mr. *S.* confeſſes, *by ſome* (yea by many) *of our greateſt and beſt learned Writers* (*y*). And Mr. *S.* hath no way to diſprove this Ancient and well atteſted Opinion, but by ſuggeſting theſe great and Learned Writers did not underſtand the word *Parochias*, which being of old uſed for a Biſhopric, he thinks, they fully applied it to denote the limits of a Country Church, and therefore he would have us believe, that ſince two new Biſhops were made in the Province of *Canterbury* in *Honorius* his time (where there were three Biſhoprics before) therefore it was ſaid, *Honorius primus Provinciam ſuam in Parochias diviſit*; that is, He firſt divided it into Biſhoprics. But how could the erecting two New Biſhopricks, in two newly converted Countries, be called a dividing his whole Province into Biſhoprics? or what probability is there, ſo many Learned Authors ſhould be ſo groſly miſtaken? they muſt have ſmall Opinion of either their learning or diligence, who will quit their plain ſenſe for ſo harſh a gloſs as this of Mr. *S.* who indeed hath nothing againſt this Tradition, but meer gueſſes, and therefore we will (till better proof appear againſt it) take it for granted, *That* Honorius *divided his Province into Pariſhes in the modern ſenſe*, An. 630.

(*w*) *Godwin.* Vitâ *Honorii.* p. 59.
(*x*) *Cambden's* Britan. p. 104.
(*y*) Hiſt. *Tithes*, Ch. 9. p. 256.

§. IV. As for the increaſe of Pariſhes afterward, by the building of many New Churches, our ancient Hiſtorians will inform us, that Biſhops were the firſt builders of Country Churches, as Mr. *S.* out of *Bede* teſtifies concerning *Byrinus*, who was Biſhop of *Dorcheſter*, *An.* 635, *That he built and dedicated many Churches* (*z*), (which was in *Honorius* his time) and therefore it is not likely that Pariſhes had their Original from Lay-foundations; and ſince Mr. *S.* grants, that the *reſtraining ſuch a Portion of the Profits*

(*z*) *Beda* hiſt. l. 3. c. 7. p. 99.

Profits from the common Treasury of the Diocess, and annexing them to a Priest resident at a Country Church, was by the consent of the Bishop (who for the better edifying of the People willingly diminished his own income,) it follows from thence, that though Lay-men did build the Churches, yet Bishops set out the Parishes at the dedication (*a*); at which time, by the old Canons the endowment of the Church was to be setled by the Bishop, who though he might be guided in the assigning the limits of a New Parish by the extent of a Lay-founders Land, yet the Bishop made these limits: And least any Lay-men should pretend to do this without the Bishop, it was commanded afterward by a Canon, *That the Bishop of the Diocess should alwaies consecrate New built Churches*, An.816 (*b*); and the same Synod in the 10*th* Canon declares, there were then divers Parish Churches in one Bishopric, and Priests ordinarily resident in them. And that there were Endowments long before setled on these Country Churches, appears by what is noted before, §.II. to which we may now add, that King *Canutus* saith, *It was due by an ancient Law for Men to pay their* Cyric-sceat *to the Church in whose Parish they lived* (*c*), referring no doubt to the Laws of King *Ina*, *An.*692, where this *Cyric-sceat* is commanded to be paid *out of that House where a man lives, at Christmas* (*d*). Afterwards the proofs for Parishes are still plainer, That old Synod in *Ireland* commanding, *That no man should depart from his own Church* (*e*), being cited in the *Statuta Synodorum*, collected *An.*900, must needs have been held long before that time; and if Parishes were limited so early in *Ireland*, to be sure they were far elder in *England*, and if they had not been limited before *An.*900, it had been impertinent in the Collector of *Statuta Synodorum*, to have put it in for a Law here; wherefore it is strange Mr. *S.* (who confesses all this) should say, *The first express limitation of Profits to be given to this or that Church, is in the Laws of King* Edgar, *An.* 970. (related before *Chap.*8. §.9.) for the instance of *Putta*'s Country Church and others before shew the contrary; but these Laws of King *Edgar* do clearly declare, Profits were limited of a

(*a*) *Bed.* l. 5. c. 4, & 5.

(*b*) Concil. ap. *Spelm.* T. 1. p. 330.

(*c*) *Malmsb.* gest. reg. l. 2. c. 11. p. 42.

(*d*) *Spelm.* T. 1. pag. 185.

(*e*) Hist. *Tithes*, Ch. 9. p. 264.

long time before; for in thoſe Laws are three ſort of Churches, firſt, *The old Minſter or Church, which was the Mother of the reſt, to which it is there ſaid, the right of Tithing properly belongs.* And this was the old Pariſh Church, built it is likely in the time of *Honorius* his firſt diviſion of Pariſhes, whoſe Territory being very large, the Biſhops and Lay-Owners (by their conſent) erected ſome new Churches and Chappels within that precinct; and if the Biſhop (who only could limit Profits) gave this Church right of Sepulture, then the Lord might (with the Biſhops allowance) give to this new Erection ſome part of his Tithe, formerly due to the Mother Church; but if it had no right of Sepulture, it remained to be a Chappel, and the Lord could not give any of the old Churches Tithes to it; but if he would have a Curate there, he muſt maintain him out of his own Nine parts, and pay his Tithe to the Mother Church beſide. Which Law is ſo far from diſproving the Antiquity of Pariſh Churches, with ſet Limits and certain Profits, that it ſhews Parochial right of Tithes was then ſo very firmly ſetled in the old Pariſh Church, and had been ſo long owned, that no new erected Church could deprive it of all its right, nor of any part of it, but by the Biſhops conſent. Which is alſo an evident proof, there could then be no Arbitrary Conſecrations made by the Laity. 'Tis true, many of theſe new Churches which had right of Burial, afterward became Pariſh Churches, yet in many places ſtill the right of the old Pariſh Church is preſerved, as in my own Church, which receives two parts of the Tithe of divers Lands lying in another Pariſh (as it is now accounted;) and that Church, in whoſe Pariſh now the Land is reckoned to lie, hath but the third part of the Tithe; which ſhews, that my Church anciently was the *Elder Minſter*, and this but a new Erection by the Biſhops conſent: But for the Churches without right of Burial, they were and ſtill are only Chappels, and this in after-times was reckoned the diſtinction between a *Parochial Church* and *Chappel*, that the one had right of Burial, and the other had not. As for the Original of ſome

Pariſhes

Pariſhes after the Conqueſt, it is rather an alteration of the old diviſion of Pariſhes than any new Diviſion; and ſince Mr. *S.* grants it was made by Eccleſiaſtical conſent, that ſhews the Biſhops firſt divided Pariſhes, his firſt inſtance is clear, *viz.* of a command from the Pope to the Archbiſhop of *York*, to erect a New Pariſh within one that was too large (*f*); and his ſecond inſtance only ſhews, that the Biſhops did deſire the King to conſent to the putting two Pariſhes together, but ſtill the uniting theſe Churches (though done by the Kings Licence, who it is likely was Patron of the Church to be united to that Hoſpital Church) was the Biſhops Act, as is moſt evident from a Patent of King *Edward* the Third, for ſuch another Union where the King gives Licenſe —— *ut ille ad quem pertinet, annectere & unire poſſet* (*g*); that is, that the Biſhop may unite two Pariſhes. Wherefore by all this it is plain, both that the diviſion of Pariſhes is very ancient, and that the Biſhop always did limit them, and aſſign the Profits to them; and this may ſuffice for Parochial Limits.

(*f*) Hiſt. *Tithes*, Ch. 9. p. 267.

(*g*) Monaſt. Tom. 1. p. 493. & pag 494.

CHAP. X.

Of the Practice of Tithing.

§. I. AFter this large enumeration of Laws, and conceſſion of the ancient Original of Pariſhes with limited Profits, we might have expected Mr. *S.* ſhould have produced many Inſtances of regular Parochial payment; but on the contrary he hath raked into all ſorts of Records for feigned Inſtances and falſe Conjectures to diſprove it, as if he were not a Hiſtorian, but a party, and intended not to relate matter of fact, but to argue againſt the

the Truth. The cuſtome of the old *Saxon* Pirates, who Sacrificed the Tenth Captive to one of their Pagan Gods (*h*) is nothing to this purpoſe, and ſeems only related by Mr. *S.* here, to ſhew his Reading; yet it is more likely this Captive was offered to *Woden* or *Mercury*, *To whom* (ſaith Cambden) *they offered humane Sacrifices, and eſpecially of a Victory* (*i*), then to *Neptune*, as Mr. *S.* conjectures. The ſtory of *Cedwalla*, King of the *Weſt-Saxons*, Tithing his Spoils to God before he was baptized (*k*), *An.*686, is no proper proof of Heathens devotion in Tithing, but rather an evidence, that the Chriſtian *Saxons*, *An.*686, uſed to pay Tithes; for *Cedwalla* had converſed with Chriſtians, and though he deferred his Baptiſm, yet he was well opinionated of the Chriſtian Faith before he was baptized, as appears by *Bedes* relation, *of his giving the Fourth part of the Iſle of* Wight, *and alſo of the Spoils to* Wilfrid *the Biſhop, as he had vowed before his Baptiſm* (*l*). And (whatever Mr. *S.* pretends) there is no contradiction between *Bede* and *Malmsbury*, for *Bede* mentions his Vowing Spoils alſo, as well as the Fourth part of the Iſle of *Wight*, while he is relating his War there; and *Malmsbury* is ſpeaking of another War againſt the *Kentiſh* Men, after which he tells us, *That he Tithed to God all his Spoils of War*: ſo that it is likely they may ſpeak of two ſeveral things. But if *Malmſbury* do call the giving of the Fourth part of his Spoils to God, the *Tithing* them, that will ſhew that a *Tenth* part was moſt uſually conſecrated, and that the word *Tithing*, in *Malmsbury*, is uſed for *Conſecrating*, even as we ſhewed before, Δεκατεύειν [*to Tithe*] among the Greeks is put for Καθιερῶν [*to Conſecrate*] for the very ſame reaſon. Mr. *S.* pretends to give ſome other inſtances of the like uſe of the word *Decima*, for any *Conſecrated* part, but they do not reach the point; for if Pope *Gregory* the Ninth do call King *Athelſtanes* giſt of four *Threaves* out of every plough Land in the Eaſt-riding, to S *John* of *Beverley* a Tithe, it is not unlikely it may be a full Tenth, for every Threave is 24 Sheaves, and four Threaves is nigh 100 Sheaves out of every Plough-land; but Authors differ ſo much about the quantity

(*h*) *Sidon. Apol.* l.8.ep.6.pag. 185.

(*i*) *Cambden* Britan p.79.

(*k*) *Malmsb.* geſt.reg.l.1. p.6.

(*l*) *Bed.* hiſt.l.4. c.16.p.169.

quantity of a Plough-land, that we cannot exactly determine this matter. His next inſtance of *Robert Heſel* (who gave to the building of *Giſeburn* Church *duas Garbas*, out of his Land of *Heſel*, which is alſo called a *Tithing*) cannot be explained of two Sheaves only, for that had not been worth fetching, nor would it have been conſiderable toward building a Church; and therefore it muſt ſignifie, *Two Tithe Sheaves*, the Third being uſually reſerved by the Biſhop for the Pariſh Prieſt, before he would allow ſuch gifts. Thus in the Pariſh of *Hurſt*, *Perpoint* in *Suſſex*, the Abbot of *Lewis* had two Tithe Sheaves, and the Prieſt of the Pariſh the Third: But however this word *Decima* be uſed, whether for the *Tenth*, or any other part *conſecrated*, it makes nothing againſt the general uſage of Tithing.

§. II. Mr. *S.* paſſeth by many unexceptionable proofs of Tithes paid in the times of the *Britons* and old *Saxons*, and produces a ſtory of *Auguſtines* excommunicating the Lord of *Cometon* for nōt paying his Tithes, becauſe there are ſome incredible circumſtances in it; but though *Jorvallenſis* (*m*) report this Hiſtory at large (an Author in great credit with Mr. *S.*) yet we will not defend the Relation, but rather note that Mr. *S.* ſaith, *No doubt can be, but that ſome Practice of payment was here uſed very anciently, which (beſide the Devotion to be ſuppoſed in Chriſtians, and the Doctrine of the Ancient Fathers, which very likely wrought here as in other Weſtern-Churches) may be collected out of the* Saxon *Laws* (*n*). And he muſt think the old *Saxons* had but little devotion, if the Doctrine of the Fathers, the Example of other Weſtern Churches, the Laws of the Kingdom, and equity of the thing it ſelf, could not move them to give Tithes. The Epiſtle of *Boniface*, *An.* 750 (cited above) ſhews they ordinarily paid them, before Laws were made to compel them. And ſince the *Britons* learned from S. *Germanus* and *Lupus* to give Tithes, *An.* 470, it is no ſtrange thing that Tithes ſhould be paid in S. *Cadoc*'s time. As for the paſſage of *Beda* concerning *Eadbert* Biſhop of *Lindiſfarn*, *An.* 665, *Who gave the Tenth of his Cattel, Fruit, and Gar-*

(*m*) Hiſt. *Jorval.* col. 736.

(*n*) Hiſt. *Tithes*, Ch. 10. p. 275.

Garments every year to the Poor, according to the Law (o), is an evidence that Tithe was then thought to be ſo due to God from all, that this devout Biſhop (who being of the Clergy himſelf, could not pay them to the Clergy) paid them to the Poor; but not as Mr. *S.* ſuggeſts, *according to the Law of Moſes*, for that Law never enjoyned any Man to give all his Tithes every year to the Poor; wherefore the meaning is, *according to the Law of God*, which was then believed to declare the *Tenth* to be Gods part, and where the Clergy could not be his Receivers, there he thought the Poor ought to be ſo: And this Opinion ſo prevailed by the Example of this and other devout Clergy-men, that within an 150 years after, a Canon was made to enjoyn the Tenth part of every Biſhops Eſtate at his de eaſe to be given to the Poor. *p*

(o) *Bed.* hiſt. l. 4. c. 29.

(p) Concil. *Celcyth.* An. 816. *Spelm.* Tom. 1. pag. 330.

If Mr. *S.* his deſign were not to make the payment of Tithes ſeem late, arbitrary, and uncertain, how could he (after all his proofs and confeſſions of payment among the old *Saxons*) pretend that we can only *conjecture there was ſome ſuch practice from* Canutus *his Epiſtle*, *An.* 1031 (*q*); whereas it is as certain as Hiſtory can make any thing, that Tithes were generally paid long before, and *Canutus* there ſaith, *Tithes are due by the ancient Law*: And though the King do there threaten to execute the penalties on ſuch as had not paid them fully at his return, that doth not ſuppoſe any general neglect, only it ſhews a great Opinion of their being due, and that he intended to terrifie all covetous and ſacrilegious Perſons from doing ſo great an act of Injuſtice as the detaining of them was, in his opinion; ſo that it only proves there might be ſome ill Men in that Age, as there are in all others. As for that other complaint, which he thinks, is but a later Edition to King *Edwards* Laws, *That ſome, after the firſt granting of Tithes, had by the inſtinct of the Devil detained them, and the Prieſts having large Pariſhes, and enough beſide, were remiſs in demanding them* (*r*). This is no proof of general omiſſion neither, for the wickedneſs of ſome People, and the connivance of ſome depending Clergy Men in this Age of ours, though they be generally paid regularly, might give us occaſion to ſay as much now.

(q) Hiſt. *Tithes*, Ch. 7. p. 277.

(r) Leg. *Edv.* Confeſſ. c. 9. *Spelm.* Tom. 1. p. 621.

As

As for the time before King *Edward*, there is sufficient Evidence of general payment, and very strict Laws to enforce it; and in the *Confessors* time Tithes were so well paid, that the Charters after the Conquest made that the Rule for good payment: so *Henry* the First orders, *That the Church of S.* John *of* Beverly *shall have its Tithes paid as fully as when it was best paid, in the days of King* Edward, *or of his Father* William *the Conqueror* (*s*). The same King *Edward* also himself gave Tithes, as Mr. *S.* confesses *pag.*351, and confirms those Tithes which *Ælstrued*, Neece to K. *Alfred*, had given to the Church of S. *Peter* in *Gant* (*t*); yea in the time of the *Danes* also, Mr. *S.* owns dedication of Tithes (*u*), so that all this scruple was only to cast a Mist before unwary Readers.

(*s*) Hist. *Tithes*, Ch. 14. p. 417.

(*t*) Registr. *Roffense.*

(*u*) Hist. *Tithes*, Ch. 11. p. 299.

But he tells us, *However it might be in elder times, it was about the* Norman *Conquest much discontinued* (*w*), which he would prove from *Domus-Dei* Book, where divers Churches are reckoned up with other Possessions, and yet but seldom are Tithes named among those Possessions. To which I answer, Since he hath granted Parochial right of Tithes to be fixed so long before, it is certain these Churches once had a right of Tithes, and there is no account in History when or how these Churches should lose this right again, nor any reason to believe, that since some Churches (mentioned in this Record) did retain this right, others should have lost it. And there is a clear reason, why in that Book some Churches have Tithes mentioned, and others not, *viz.* because the Inquest was made by divers Jurors, some of which left Tithes out, because they were free from all service to the King, and others thought fit however to put them in. But this Negative Argument, or rather Conjecture, will quickly vanish, when we consider what full and expres proof there is, that Tithes did belong to Churches in the Conquerors days, and were always conveyed with them. Mr. *S.* shews, that Parochial Tithes were sued for in this Kings time (*x*), and that the payment of Tithes then, was made a Rule for good payment in the Reign of King *Henry* the First (*y*). The Conquerors Charter to

(*w*) Hist. *Tithes*, Ch. 10. p. 279.

(*x*) Hist. *Tithes*, Ch. 14. p. 416.

(*y*) Ib. p. 417.

the Abby of *Battel*, ſhews he gave to that Abby *the Churches of* Radings, Culinton, *and S.* Olaves *in* Exeter, *with the Tithes, and all elſe pertaining to them* (*z*); and Mr. *S.* remembers how the ſame Prince gave to the Abby of S. *Auguſtines* in *Canterbury*, *the Churches of* Feverſham *and* Middleton, *and all the Tithes of thoſe two Mannors, and their appurtenances* (*a*). The Chartulary of *Rocheſter* (commended by Mr. *S.* above all others) ſaith he gave to the Priory there *Rotherfield, with all appertaining to it, in Tithes, &c. the Church of* Walton, *with the Tithes of all pertaining to it.* And King *Henry* the Firſt doth in thoſe *Chartularies* confirm divers Tithes to that Priory, commanding they ſhall be paid to them, as fully as they had been in the days of his Father: which are ſuch plain evidence, that Tithes then were reckoned to be due and appertaining to Churches, that if ſome of the Inqueſt did not return them, yet we may be aſſured they were among the poſſeſſions of all Churches in that Age. And if *Ingulphus* only mentions Churches given to *Crowland* Abby, and not *Eccleſias cum Decimis* (*b*), while he is remembring the Grants in the *Saxon* times; that ſhews, that Tithes were then ſo conſtant, ſo known, and ſo certain an appurtenance of every Church, that there was no need to name them particularly, becauſe they went with the Church, which would not have been worth giving, if the Monks had been bound to find a Vicar, and yet no Tithes had belonged to it. But to proceed with the Conquerors time, The former proofs ſhew, that it is a deſigned extenuation in Mr. *S.* to ſay, *There was ſome kind of payment at leaſt to ſome Churches in this time* (*c*). For it is plain, the payment was conſtant and univerſal; and though many things were put into confuſion for a while at the Conqueſt, yet the Conqueror who had ſworn to maintain the Churches right, did not at all offer to take away the eſtabliſhed payment of Parochial Tithes, if he had, the Clergy of that Age, ſome of which liberally publiſh his Crimes) had not concealed this notorious Sacriledge, of which there is not the leaſt mention in any Author: and therefore Mr. *S.* wiſely forbore to mention *His gifts of Churches with Tithes*

(*z*) Monaſtic. *Angl.* Tom. 1. p. 317.

(*a*) Hiſt. *Tithes*, Ch. 11. p. 321.

(*b*) Hiſt. *Tithes*, Ch. 10. p. 281.

(*c*) Hiſt. *Tithes*, ib. p. 282.

to

to the Priory of Rocheſter;(ſome of which we related before) for this would have diſcovered the vanity of his pretences, and ſhewed, that Churches and Tithes then always went together.

In King *Henry* the Firſts time, out of innumerable proofs of regular payment, Mr. *S.* picks up ſome few that may ſeem to make it dubious: The Monks of *Lindisfarn* (he ſaith) deſired of a Covetous Lord *the Tithe of Fiſh, due to them by Law and the cuſtom of the Province*; which proves both a right and ancient practice, and though this evil Man would not do him juſtice, yet that is no proof of general Non-payment; and the Relator ſaith, God revenged this Impiety on him, which ſhews it was a crime not often committed, becauſe it was puniſhed by a remarkble Judgment. Thoſe Perſons who lived within the Pariſhes of Churches appropriate to Abbies, ought to pay their Tithes to thoſe Abbies, and no others; and theſe were thoſe whom the Chartulary of *Abingdon* complains of, That they did not pay their Tithes in kind, as it was enjoyned by Law, but in lieu thereof 40 Sheaves out of a Hide, or elſe the Tenth Acre of their Tillage; but we ſee this Practice was contrary to Law, and to the uſual way of paying Tithe, and therefore it is complained of: for the Tithes of theſe Churches were Canonically conveyed to that Abby of *Abingdon*, as the Bull of Pope *Eugenius* ſhews, *An.* 1146, which mentions and confirms divers Churches, *which they juſtly and Canonically poſſeſſed* (*d*).

(*d*) Monaſtic. *Angl.* T. 1. pag. 107.

In the time of King *Henry* the Second, Mr. *S.* produces a Decretal of *Alexander* the Third, which ſaith, *Men were bound to pay the full Tenth part of their Fruits to that Church of which they were Pariſhioners, according to the general Inſtitution of the Church of* England (*e*); and another Decree of the ſame Pope, directed (not only to the Dioceſs, but) to the whole Province of *Canterbury*, declares, *That the People of that Province were wont to pay their Tithes entirely, to thoſe Churches to which they were due; but now neglecting this laudable Cuſtom, ſome did detain ſome kind of Tithes* (*f*). And Pope *Adrian*, Predeceſſor to *Alexander*, in the next

(*e*) Append. ad Concil. *Later.* par. 4. c. 4.

(*f*) Decret. l. 3. Tit. 30. cap. 5. pag. 1327.

inſtance, Orders *the Monks of* Boxly *to pay Tithes as fully, as they had been paid before thoſe Monks came thither* (*g*); that is, before the foundation of that Abby, *An.* 1144. whence it follows, Tithes had been fully paid to the Pariſh Church there, before the year 1144, that is, long before this King *Henry*'s Reign began: To which he adds, that a Judge delegate from Pope *Honorius*, *An.* 1220. declares, *That certain Tithes were due to the Church of* Leonminſter, *De jure communi, becauſe they grew within the Pariſh* (*h*). Finally, Mr. *S.* ſaith, there are other declarations of that kind in the *Leiger* Book of Reading: Yet though we ſee Examples, ancient Cuſtom, general Inſtitution of the Church, laudable Uſage, and allowed Law, do all concur to prove regular payment of Tithes continued in this time. Mr. *S.* tells us, *We muſt not conclude out of all theſe for Practice, viz.* purely for this reaſon, becauſe they croſs his novel device of Lay arbitrary Conſecrations, which he is ſo far from juſtifying, by the Examples of the next Chapter, that we ſhall ſhew they are all falſified, and purpoſely miſtaken to carry on an ill deſign.

(*g*) Ib. cap. 4. pag. 1327.

(*h*) Hiſt. *Tithes*, Ch. 10. p. 284.

He proceeds to *Henry* the Third, where though it appears, the Tithes of Hay and Mills on the Kings demeſns, were detained by ſome of his Bayliffs, *An.* 1227, which occaſioned that Writ of the Kings to enjoyn theſe Tithes, ſhould be fully paid for the future: yet it is plain, that Tithe Hay was regularly paid by others long before, for the Chartularies of *Rocheſter* mention a Sute between the Prior of *Rocheſter* and the Parſon of *Bocton Malherb*, *An.* 1166, for Tithe Hay, which the Parſon claimed in right of his Church, and the Prior by Preſcription and Poſſeſſion time out of mind. And there alſo *William de Albeney* (who died *An.* 1136) is remembred to have given Tithe of his Mills at *Elmham* to the ſame Priory. Yea the Conſtitutions before mentioned, *Chap.* VIII. §. 24. made in this Kings Reign, do mention the Tithe of Mills and Hay among (*Decimas conſuetas*) Tithes that were uſually paid. As for the Times after this King, Mr. *S.* grants there are certain proofs of Parochial right of Tithes, claimed *De jure communi*,

muni, and that before the time of *Edward* the First, the Parson need make no other proof of his right to Tithes, but to prove they lay in his Parish; of which he saith, *there are frequent Examples in the Year Books*; pag. 285. But out of them all he produces not one, because they establish Parochial payment, choosing rather to divert his Reader with an impertinent story of the Parsons and Vicars of *Cornwal* paying Tithes of the Stannaries there, though (for ought appears) they had recovered them of the King, if it had been proved they had been usually paid to the Bishop of *Exeter*. After this Mr. *S.* goes on to the time of *Edward* the Third, and *Richard* the Second, (though he grants Parochial right established long before) and for want of other matter he relates the Rhithms of Satyrical Poets, who in all Ages use to reflect upon Men of any Profession in power and esteem; but I suppose he doth not take these Mens fancies for true Characters, if he did, we might remember what *Chaucer* saith of the Men of Mr. *S.* his Profession: but this is to leave the Subject.

The Custom of paying *Mortuaries*, in satisfaction for omission of Tithes, is much ancienter than *Edward* the Thirds time (*i*), there being a Constitution for paying them made by *Stephen Langton*, Archbishop of *Canterbury*, *An.* 1206, mentioning a former Constitution of his Predecessor about the same thing (*k*), and another of *Richard* Bishop of *Durham*, *An.* 1276 (*l*). But as well this paying of Mortuaries, as all before remembred, do abundantly shew, Parochial right was received and acknowledged from ancient times, and though Mr. *S.* hath made so many vain attempts to make it seem of later Original, yet at last he confesses, *It is not clearly known when it came first to be setled in Practice* (*m*). I answer, It must needs begin as soon as Parishes were set out, and Profits limited, which he hath granted, and I have proved was in the times of the Old *Saxons*, and therefore it is strange he should here doubt, whether it were customary in King *Henry* the Seconds time, or produce that idle story of his mistaken Monks, who report it began to be setled first in the Council of *Lyons*, *An.*

(*i*) Hist. *Tithes*, Ch. 10. p. 287.

(*k*) *Spelm.* Concil. T. 2. p. 133.

(*l*) Ib. p. 318.

(*m*) Hist. *Tithes*, Ch. 10. p. 288.

*An.*1274. (a Council which ſaith not one word of this matter.) Is it not certain, by what Mr. *S.* and my ſelf have cited, *Chap.* VIII. that this Right was ſetled not only before *Edward* the Firſts time, but long before the Conqueſt by Synodal and Secular Laws too? How then could it be found never ſetled till *An.* 1200? or what evidence is there of any diſcontinuance before that time? The former Inſtances ſhew there was no ſuch matter, nor can it be collected from the illegal and condemned practice of ſome Perſons in one Dioceſs (which is all that is implied in *Innocents* Decretal, cited before *Chap.*VIII.§.23.) that there was any general diſcontinuance, ſince *Alexander* the Third ſaith (not 20 years before) *That the Men of that Province were wont to pay their Tithes fully to the Churches to which they were due*, (as was ſhewed juſt now;) and if *Many in that* (not Province, as Mr. *S.* falſly reports, but) *Dioceſs did preſume arbitrarily to diſtribute their Tithes, in* Innocents *time*, the practice was preſently declared unreaſonable, unjuſt and illegal, and was immediately reformed, and ſo doth not prove any general omiſſion of paying Parochial Tithes. And the next Chapter will ſhew, there was no ſuch uſual arbitrary Conveyances of Tithes to Monaſteries by Lay-men as he pretends, either uſed in fact or allowed by Civil, much leſs by Canon Law; for the Laws always required the Biſhops conſent to theſe Lay-grants, and in Fact, the Lay Grantors ever had their Grants confirmed by ſuch conſent in all times, as I ſhall prove by a thouſand inſtances. Now though the Biſhops did ill to conſent to ſuch Grants, yet ſince the Original right of diſtributing Pariſhes and Parochial Tithes was believed to be in them, this Conſent both ſhews the Lay-mens Grants were not arbitrary, nor Parochial right overthrown by ſuch like diſpoſitions of Tithes. As for *Wicklief*, he is as much miſtaken in his Chronology as he is in his Opinion; and though Mr. *S.* would help him out, by explaining *within few years*, to be *within* 200 *years*; yet all this will not ſhake the foundation of Parochial Tithes, or make any conſidering man think they began ſo late as the year 1200. But he

he cites ſome paſſages out of the Year Books, to prove, *That before the Council of* Lateran, *every man might give his Tithes to what Church he pleaſed* (*n*); which if it be underſtood, that they might do it with the Biſhops conſent, before that Council, and not afterwards, ſince the Biſhops were there forbid to conſent: in this ſenſe it is true; but in Mr. *S.* his ſenſe it is notoriouſly untrue: and Mr. *S.* confeſſeth, *pag.* 359, *That theſe paſſages in the Year Books have been taken for falſhoods, grounded upon ignorance*; and ſo they really are, if they mean the Laity might do this without the Biſhops conſent, though I am apt to believe, both the Monks, and the old Lawyers did mean it of a power to give their Tithes to Monaſteries by Epiſcopal conſent, and then their Aſſertions may be reconciled to ſenſe and truth. But Mr. *S.* who ſtrains theſe expreſſions to Arbitrary power of diſpoſing Tithes by Lay-men, blunders extreamly to bring them off, confeſſing no Canon of any *Lateran* Council of that time, did alter the Law in that particular, and then conjectures it was but a private Decretal Epiſtle, ſigned in the *Lateran*, only relating to the Dioceſs of *Canterbury*, which they took for the *Lateran* Council; but all this while he ſuppoſes his Monks and Lawyers to be notably skilful, who could not diſtinguiſh between *Lyons* and *Lateran*, nor between *Gregory* and *Innocent*, nor between a private Decretal and a General Council: So that we may perceive it was his exceſs of affection to his New device of arbitrary Lay Conſecrations, that runs him upon all theſe falſe and miſtaken conjectures about the original of Parochial payment of Tithes; but unleſs his following Inſtances were better proof, he might have ſaved the labour of making theſe two Chapters to undermine Parochial right, and introduce them with ſome apparance of Probability: For neither do theſe Arguments, nor thoſe Inſtances, ſhake the ancient uſual and univerſal cuſtom of paying Tithes parochially, where the Biſhop did not agree to ſome other diſpoſal of them.

(*n*) Hiſt. *Tithes*, Ch. 10. p. 292.

CHAP.

CHAP. XI.

Of Arbitrary Conſecrations, from the year 1000 *till after the year* 1200.

§. I. THE great ſtrength for Mr. *S.* his proofs of *Lay Conſecrations*, lies in the many Inſtruments yet remaining in the Chartularies of the old Abbies, which he hath here collected, as undeniable evidence that Lay-men, from the year 1000 till after the year 1200, did at their own pleaſure (without requiring the Biſhops conſent) conſecrate their Tithes, or any part of them, to Monaſteries; which Donations were made, as he pretends, only by theſe Charters he produces, and allowed by the practiced Law of that time, and that if there were any Confirmations of Biſhops added to the Lay-Donors Charter, they were procured by the Monks afterwards to ſatisfie the Canons. But all this is ſo contrary to truth, and to the practice of that Age, that though I have no other help than what I receive, from the Chartularies of *Rocheſter* (tranſcribed by Doctor *Tildeſly*, formerly Archdeacon there) from the *Monaſticon Anglicanum*, and from Mr. *S.* his own Inſtruments here cited; yet I doubt not to ſhew, that the Biſhops Conſent was required to make the Lay-mans Grant valid from the beginning, yea that the very Biſhops Charters originally allowing theſe Lay-Grants are extant, even in Sir *Robert Cottons* Library, out of which Mr. *S.* quotes theſe Inſtruments, ſo that it was impoſſible for him to find the Lay Grant, but he muſt at the ſame time ſee the Biſhops Charter; yet he conceals the Biſhops Charter moſt diſingeniouly, and fraudulently tranſcribes the Lay Charter, as if it were arbitrary, and made without any Biſhops conſent at all. And beſides, he often

often cites later Confirmations of the Lay granters Heirs, as if they were Original Grants, and pretends theſe to be Arbitrary Conſecrations, when the *Tithes* mentioned in them were confirmed by Biſhops long before; indeed this whole Chapter is ſo full of deſigned miſtakes, and fraudulent dealing, that it is enough to ſhew how little he can be truſted in matter of fact, who to ſerve an evil end, and ſupport a falſe Opinion of his own, values not how falſly he repreſents the matter. But becauſe his Inſtances are thrown into a confuſed heap, I ſhall render the practice of the time more intelligible, and more orderly and briefly confute all his Inſtances, by reducing them under thoſe ſeveral evidences of Eccleſiaſtical conſent, which overthrow his pretended Arbitrary Conſecrations.

Firſt, The ancienteſt way of declaring the Biſhops conſent was, by their ſigning and ſealing the Original Charter; which practice was uſed in the old *Saxon* Times before the Conqueſt, where we find no Charters made to any Abbies, but ſtill the Biſhops do ſign and ſeal them; and though the *Saxons* uſually gave only Land, and rarely any Tithes to their Abbies (the firſt gift of Tithes to the Abby of S. *Auguſtines, Canterbury*, being one of *William* the Conqueror (*o*)) yet ſtill their Biſhops conſents were deſired to confirm it, and therefore they ſubſcribe all Lay Grants with theſe words, *Confirmavi, Corroboravi, Aſſenſum dedi, &c.* ſo in the Chartularies of *Abingdon*, Pope *Leo*, and *Rethun* a Biſhop, conſent to *Kenulphs*'s Donation, *An.* 821 (*p*). Biſhop *Hedda* conſents to *Ina*'s Grant, *An.* 699 (*q*); and another of King *Ina*'s Donation, is ſaid *to be Canonically and Eccleſiaſtically confirmed by King* Ina *and* Daniel *the Biſhop* (*r*): So the Charter of King *Edward* the Confeſſor to S. *Benets* in *Hulmo*, is confirmed and allowed by ſix Biſhops (*s*). And when *Oſrich*, a Nobleman, founded the Abby of *Glouceſter*, by Licence from King *Ethelred*, An. 690, *Theodore* Archbiſhop of *Canterbury*, and *Boſel* firſt Biſhop of *Worceſter*, confirm it (*t*). The ſame method of declaring Eccleſiaſtical conſent by the Biſhops ſigning the Original Grant, was uſed both in *Ireland* (*u*), and alſo in *Scotland*

(*o*) Chron. *W. Thorn.* A. 1070.

(*p*) Monaſt. *Angl.* Tom. 1. p. 100.

(*q*) Ib. p. 99.

(*r*) Ib. Vide etiam Monaſt. *Angl.* T. 1. p. 13.

(*s*) Ib. p. 284.

(*t*) Ib. p. 108.

(*u*) Mon. *Angl.* T. 2. de *Cœnob. Hibern.* p. 1027. 1031, 1032, 1035.

land (w). And ſo it was in *Normandy* before our Conqueſt, for when *Robert* Duke of *Normandy* founded the Abby of S. *Vigours*, and endowed it with Tithes, *An.* 1032, ſix Biſhops ſeal the Grant and corroborate it (x); and accordingly after our Conqueſt the *Norman* Biſhops ſtill ſigned to all the Kings Grants to Monaſteries there until the times of *Henry* the Firſt (y), yea of *Henry* the Second (z). Hence it came to be alſo the Cuſtom in *England* in the Conquerors time, for the Biſhops to witneſs the Donors Charter, and ſo to expreſs their conſent: So the Conquerors Charter to *Battel* Abby, in which he gives three Churches with Tithes, is ſigned by Two Archbiſhops and four Biſhops (a); and King *William Rufus* expreſly declares, he had the Biſhops conſent, who are alſo named as confirming his Grant (b). King *Stephen* alſo made his Donation to *Godſtow* Priory by the Conſent of his Biſhops, who confirmed it (c). Such Examples of Biſhops ſigning, and ſo declaring their conſent to the Kings Charters, are frequent in the *Monaſticon*, in the Reigns of King *Henry* the Firſt (d), King *Henry* the Second (e), K. *Richard* the Firſt (f), and King *John* (g). And in many of Mr. *S.* his Inſtances, which he brings in as Lay-mens Arbitrary Grants without Epiſcopal conſent, the Biſhops are Witneſſes to the Inſtrument: ſo here *pag.* 300. he cites a Charter of *Henry* the Firſt, confirming the Grants of *Alberic de Vere* to *Colm* a Cell of *Abingdon*, *An.* 1111, as if it were made without any Biſhops conſent, whereas the very Charter is extant at large in the *Monaſticon*, and is witneſſed by two Biſhops, yea and the Preface introducing it (cited out of Sir *Robert Cottons* Library) ſaith, *Alberic de Vere got it confirmed by the Authority of the King and the Biſhop* Mauritius, *in whoſe Dioceſs it was* (h); but this Mr. *S.* moſt unworthily conceals. So again, *pag.* 310. he pretends, *Henry* the Firſt arbitrarily gave the half Tithe of *Tarentford*, and of *Whales* catched in the Dioceſs of *Rocheſter* to the Priory there; but King *Henry*'s Charter is extant in the *Monaſticon*, and is directed to Archbiſhop *Anſelm*, and ſigned by Two Biſhops (i); ſo that it is certain it was not without Eccleſiaſtical

(w) Ib. *Cænob. Scot.* p. 1052, 1054, 1056.

(x) Ib. *Cænob. Gallic.* p. 958.

(y) Ib. p 958, & 961.

(z) Ib. p. 978.

(a) Monaſt. *Angl.* Tom. 1. p. 317.

(b) Ib. p. 318.

(c) Monaſt. *Angl.* Tom. 1. p. 526, 358.

(d) Ib p. 681.

(e) Ibid p 360, 366, 390.

(f) Ibid. p. 558.

(g) Ib. p. 478.

(h) Monaſtic. *Angl.* Tom. 1. pag 437.

(i) Mon. *Angl.* Tom. 1. p. 30.

astical consent. And *pag.* 311. *William* of *Albeny*'s Grant of *Elham* and *Bilsintune*, is confirmed by King *Henry*'s Charter directed to *Anselm*, in whose Diocess they lay, and signed by *Roger* a Bishop and Chancellor (*k*), which Mr. *S.* also conceals. The gift of *Geoffry* E. of *Essex* to the Nuns of *Clerkenwell* (produced by Mr. *S.* for an arbitrary Lay-grant, *pag.* 319) is extant in the *Monasticon*, signed by three Bishops (*l*); and *Henry* the Seconds Confirmation of *Maurice* of *Totehams* gift to the same Nuns, is signed by the same three Bishops (*m*), *Seld. p.* 351. *Henry* the Seconds Confirmation to the Monks of *Thetford*, is yet extant, and witnessed by three Bishops (*n*), *Seld. ibid.* King *Edward*'s gifts to *Westminster* (only confirmed by the Conqueror) were all signed by his Bishops, and allowed by the Pope before King *William* came in (*o*), *Seld.* 353. The Charter of *Mannasses Arsick* is confirmed by King *Henry*'s Charter, to which the Bishop of *Lincoln* is the first Witness (*p*). But Mr. *S.* takes no notice of all this, yet it utterly overthrows his pretence of arbitrary Lay Consecrations, because we see that ordinary Lay-mens Grants were confirmed both by the King and Bishop, and that the King himself gave not Tithes, unless the Bishops declared their assent at least by sealing and signing to his Charter: And we may be sure, the Bishops would not witness an Arbitrary Lay Grant, so contrary to the Canons, if their Consent were not first had thereto. I note also, that this Custom of the Bishops witnessing the Lay Grants, is a good reason why it is rare to meet with any special Charters of Bishops confirming Tithes granted to Abbies, especially before the year 1100: and now, if any shall think to excuse Mr. *S.* by saying, he did not know of this custom of the Bishops witnessing the Lay-grants, I can prove out of his own Examples that he did, for *pag.* 339 he produces a Charter of *William* Earl of *Warren*, signed by the Archbishop and three Bishops more. And *pag.* 346. King *Stephens* Charter to the Priory of *Eye*, is signed by the King, Queen, Prince and Ten Bishops (and no other) who also add an *Anathema* to their subscription, shewing they were parties to the Confirmation:

(*k*) Ib. p. 30.

(*i*) Ib. Tom. 1. p. 433.

(*m*) Ibid.

(*n*) Ib. p 667.

(*o*) Ibid. p. 55, 60, &c.

(*p*) Ib. p. 574.

ſo that he purpoſely concealed this Evidence of the Biſhops conſent in many of his Inſtances, on purpoſe to make them ſeem Arbitrary.

Secondly, There are yet extant very many Charters of Biſhops, which both granted and confirmed ſuch Tithes as were given to Abbies by Lay-men, all within the time between *An.* 1000 and a little after *An.* 1200, in which ſpace Mr. *S.* pretends the Lay-granters never required any Biſhops confirmation; a Catalogue of ſuch Charters we will here ſet down out of the *Monaſticon*, after we have firſt ſhewed, that divers ſuch Original Charters are yet extant, which were made to confirm thoſe very portions of Tithes, which he moſt unjuſtly produces here as Arbitrary Lay-grants. Among ſuch Grants to the Priory of *Rocheſter*, he reckons Tithes of *Strodes* and *Chealks*, pag. 310. *Bertrey*, pag. 313. *Henhurſt*, pag. 314. *Weſtbroc*, pag. 315. *Edintune*, p. 316. *Rundal* and *Tuang*, p 317. and quotes the Chartularies of *Rocheſter* for it, whereas in thoſe very Chartularies there is a large and full Charter of *Gundulphus* Biſhop of *Rocheſter*, from *An.* 1077 till *An.* 1107, which actually grants the Monks all theſe Tithes lying in his Dioceſs, and confirms the Lay-mens giving them, which, becauſe it ſhews the uſe of the time nigh the Conqueſt, and totally confutes Mr. *S.* his pretences, I will here cite at large, Gundulphus, *Biſhop of* Rocheſter, &c. —— *perceiving the Chriſtian Charity of our Sovereign King* Henry, *and ſome of his Nobles, to the Monks of S.* Andrew —— *We do approve and ratifie their devotion to theſe Monks, and give Epiſcopal Authority and conſent thereto, conferring on them, and granting to them the Tithes which are in the Pariſhes of divers Churches within our Dioceſs*, viz. *the Tithe of* Strodes *and* Chealks *in the Kings demeſn, and by his liberality* —— *the Tithes of* Henhurſt — Rundal *and* Thuang —— Bertrey —— Edintune, Weſtbroc, *&c.* (*reckoning up the Lay-donors of each parcel*) *And I will and command, that theſe Monks have and retain theſe Tithes ariſing out of the Mannors in our Dioceſs, and by my Epiſcopal Authority I aſſign them unto them, commanding and ordaining, that they ſhall have them for ſupply of their proviſion*

viſion for ever. This Charter Mr. *S.* muſt needs ſee, if he read over the Chartularies of *Rocheſter*; and we may judge of his integrity, in that he not only paſſeth it by in ſilence, but brings theſe Tithes by name as arbitrary Lay Conſecrations without Epiſcopal conſent. So alſo the gifts of Tithes to the ſame Monks in *Bilſintune* and *Elham*, pag. 311, *Bugley* and *Gedding*, pag. 312. *Stalefield*, pag. 313, *Hainwold*, *Schrombroch*, and *Dodindale*, pag. 316. and in *Yſfield*, pag. 317. are produced by Mr. *S.* as other inſtances of ſuch Conſecrations; whereas all theſe being under the Juriſdiction of *Canterbury*, are in the ſame Chartularies confirmed by the particular Charters of thoſe who were Archbiſhops at the time of theſe ſeveral Grants, which Charters are ſtill extant there, and this Record beſide, *The Tithes belonging to the Juriſdiction of* Canterbury; *Bilſintune*, *Elham*, (and all the particulars aforementioned) *are Canonically collated and confirmed by our Venerable Fathers, the Archbiſhops of* Canterbury, *Anſelm*, (Conſecrated *An.* 1093) *William*, *Theobald*, *Richard*, *Baldwin* and *Hubert*, *as by their Authentic Inſtruments doth appear* (*q*). But Mr. *S.* *pag.* 318. fraudulently paſſing by the elder Confirmations of *Anſelm*, *William*, and *Theobald*, (which are as ancient as the Original Grants of theſe Tithes) tells us, theſe Tithes were afterwards confirmed to them by the Archbiſhops of *Canterbury*, citing the Confirmation of *Richard*, *An.* 1176. and alſo of *Baldwin* and *Hubert* afterwards, as if theſe had been the firſt Confirmations, whereas theſe Tithes were ſome of them ſetled on them by the Archbiſhops conſent above 80 years before. *Pag.* 315. It is not certain when *Henry de Malmeins* made that Grant of Tithes, cited by Mr. *S.* but it is confirmed in the Chartularies of *Rocheſter* by *Walter*, who was Biſhop there *An.* 1147, that is, in all probability as ſoon as the Gift; but not a word of this in Mr. *S.* nor of thoſe other Confirmations of this *Walter*, and of *Gilbert*, both Biſhops there before *An.* 1200, whoſe Charters are yet extant, ſetling Tithes on theſe Monks by the words of *Damus & Concedimus*; and ſo are the Bulls of Pope *Adrian* and *Alexander*, alſo extant there, both which were

(*q*) Chart. *Roffenſ.* p. 215.

were Popes before *An.*1200. *Pag.* 319. He brings in the gift of Tithes of *Hameneſc* by *Walter Clifford*, about King *Johns* time, *An.*1200, and of *Riſebury* by *Robert Malherb* to *Leonminſtre*, as Original arbitrary Lay Conſecrations; but there is a Charter of *Richard* Biſhop of *Hereford* yet extant in the *Monaſticon* (*r*), which declares, *That he had granted with his own hand, and confirmed to* Redding, *the Church of* Leonminſtre *with all the Pariſhes pertaining to it, and particularly he names theſe two* Hameneſc *and* Riſebury, and this was *An.*1123. *viz.* nigh 80 years before the confirmation of *Walter Clifford*, which though he cites here as an Original Conſecration, is no more but a confirmation of what his Anceſtors had preſented to the Biſhop to ſettle on that Church many years before. *Pag.* 330. Mr. *S.* ſpeaks of Tithes confirmed to the Abby of *Boxgrave*, by *William* and *Robert St. John*, *An.*1180, formerly granted by their Anceſtors, but he diſhoneſtly conceals the Charter of *Hilary* Biſhop of *Chicheſter*, extant at large in thoſe very Chartularies, which grants and confirms to thoſe Monks——*all their Poſſeſſions lawfully conveyed to them*, and particularly *the Churches of S.* Mary *of* Boxgrave, *of* Hanton, Honeſtan, Brideham, Ichenore, Walborton, Bernham, *and the Tithes of* Tadeham, Chienor *& decimas gabulorum totius Parochiæ* (*s*); all which Mr. *S.* brings in for Examples of arbitrary Lay Conſecrations, yet this *Hilary* was Biſhop of *Chicheſter*, *An.*1133, which was almoſt as ſoon as the Monaſtery was built. And *Pag.* 332. Mr. *S.* grants ſome of theſe Tithes were confirmed to the Monks of *Boxgrave* by *Seffrid*, who was Biſhop of *Chicheſter* at the time of the Foundation. *Pag.*334. He ſpeaks of Lay Conſecrations of Tithes to the Priory of S. *Neots*; but in the *Monaſticon* there are two Charters *John* Biſhop of *Norwich* (*circ. An.* 1175,) and one of *Hugh* Biſhop of *Lincoln* (*circ. An.*1186) confirming thoſe *Churches* and *Tithes* to them, which lay in their ſeveral Dioceſſes (*t*); but of theſe Mr. *S.* ſays nothing. Yet among his Examples, *pag.* 327. he cites a confirmation to the Monks of *Tinemuth*, of the Tithes within the Biſhopric of *Durham*, by *Hugh*, who was Biſhop there, *An.*1195. and

(*r*) Mon. *Angl.* Tom. 1. p. 420.

(*s*) Mon. *Angl.* Tom. 1. p. 596.

(*t*) Mon. *Angl.* Tom 1. p. 369, 370.

and ſaith, they had the like from the Archbiſhop of *York*. And *pag.* 344. he produces one clear inſtance of the uſe of the time about *An.* 1100; for the Charter of *William Giffard* Biſhop of *Wincheſter* (conſecrated *An.* 1107) declares, *That one* Siward *of* Ealdeſted *came into his preſence, and upon the Altar offered the Tithe of* Hludrake *to the Chanons of* Suthwerc *by his conſent, and the Biſhop accordingly commands they ſhall enjoy it.* And in the *Monaſticon* there is another Charter of this ſame Biſhop, declaring alſo, *That the Patron and Pariſh Prieſt of* Stokes *came before him, and offered up the Tithes of* Stoke *to the ſame Canons, by a Knife laid upon the Altar* (*u*). Whence we may infer, that all gifts of Tithes to Abbies in that time were paſſed through the Biſhops hands, who by their Charters did ſo uſually confirm them, that we ſhall here preſent a Catalogue of ſuch Confirmations yet extant in the *Monaſticon*, between the year 1000 and the year 1240, ſetting down the dates of the Charter, where they have dates, and where they have none, the time of the Biſhops Conſecration.

(*u*) Mon. *Angl.* Tom. 2. p. 86.

A Catalogue of Bishops Charters extant in the Monasticon.

Name of the Monastery to which the Tithes were granted.	The Bishops name who made the Charter.	The Date, or Year of his Consecration.	The place in the *Monasticon* where it is found.
1. *Castle-acre*	*Herbert of Norwich*	Consecr. 1088	Tom. I. Pag. 630
2 *Eynsham*	*Remigius Lincoln*	Dated 1091	ibid: p. 264
3. *Farewel*	*Roger Chester*	consecr. 1119	ibid. p. 441
4. *Cumbermere*			ibid. p. 765
5 *Romburge*	*Everard Norwich*	consecr. 1120	ibid. p. 404
6. *Castle-acre*			ibid, p. 630
7. *Luffield*	*Alexander Lincoln*	consecr. 1123	ibid. p. 522
8. *Leonminster*	*Richard Hereford*	dated 1124	ibid. p. 420
9. de Lyra (*Normady*)	*Henry Winchester*	consecr. 1129	Tom. II. p. 986
	Robert Hereford	consecr. 1131	
10. S. *Marys York*	*Adelwald Carliste*	consecr. 1133	Tom. I. p. 399
11. *Romburge*	*Theobald Canterbury*	consecr. 1138	ibid. p. 404
12. *Nutly* and *Kington*	*Joceline Sarum*	consecr. 1139	Tom. II. p. 156
			ibid. p. 888
13. *Monkton*	*Henry Murdac York*	consecr. 1142	Tom. I. p. 476
14. *Durham*	*William Durham*	consecr. 1143	Tom. II. p. 846
15. S. *James Exeter*	*Robert Exeter*	dated 1146	Tom I. p. 644
16. *Bristal*	*Robert Lincoln*	consecr. 1147	Tom. I. p. 588
17. *Osulreston*			T. II. p. 276,
18. de Lyra *Normandy*	*Gilbert Hereford*	consecr. 1149	ibid. p. 986 (277.
	John Worcester	consecr. 1150	ibid. p. 987
19. *Nun-kelling*	*S. William York*	must be dated 1153	Tom. I. p. 475
	Roger York	consecr. 1154	ibid.
20. *Albemarle*	*Robert Lincoln*	dated 1156	Tom. II. p. 999
21. *Stoke-Clare*	*Thomas Canterbury*	consecr. 1162	Tom. I. p. 1005
22. *Denny*	*Nigellus Ely*	dated 1169	ibid. p. 492
23. *Romburge*	*Galfridus Ely*	consecr. 1174	ibid. p. 404
24. *Reinham*	*John Norwich*	consecr. 1177	ibid. p. 638
25. *Bingham*	idem	dated 1181	ibid. p. 346
26. *Luffield*	*Hugh Lincoln*	consecr. 1186	Tom. I. p. 582
27. *Malton*			Tom. II. p. 819
28. *Reinham*	*Hubirt Canterbury*	consecr. 1193	Tom. I. p. 638
29. *Monklane*	*William Hereford*	consecr. 1186	Tom. I. p. 598
30. *Southampton*	*Godfrey Winchester*	dated 1204	Tom II. p. 110
31. *Parco*	*Walter York*	consecr. 1217	ibid. p. 290
32. *Bristall*	idem	dated 1220	Tom. I. p. 580
33. *Barnstaple*	*William Exeter*	dated 1233	ibid. p. 1025
34. *Selborn*	*Peter Winchester*	dated 1233	Tom. I. p. 343

Thirdly,

Thirdly, But though the Original Biſhops Charters granting divers of theſe Tithes mentioned by Mr. *S.* at the very firſt donation of the Lay Founders, be now periſhed by length of time, yet we may be aſſured there was ſuch Charters by theſe following undeniable proofs.

Firſt, Becauſe it is recorded, that the Biſhops (who generally were taken out of Monaſteries, and ſo were great Friends to the Monks) did adviſe and perſwade the Lay Donors to make Grants of Tithes to Abbies. So *Pag.* 306. the Charter of *Robert d'Oiley* (out of which Mr. *S.* reckons up thoſe gifts of Tithes to the Abby of *Oſney*, as arbitrary Lay Conſecrations) ſaith expreſly, *That he founded this very Abby, Conſulente & confirmante* Alexandro *Dei gratiâ* Lincolnienſi *Epiſcopo* (*w*); ſo that it is plain he adviſed *Robert d'Oily* to found it, and confirmed the endowment at firſt, though his Charter be not now extant. And the *Monaſticon* cites another old Record ſaying, *Robert d'Oily founded this Church by the approbation of* Theobald *Archbiſhop of* Canterbury, *and* Alexander *Biſhop of* Lincoln (*x*). Alſo that other Charter of the ſame *Robert d'Oily* (cited by Mr. *S. pag.* 307) expreſly ſaith, *The Biſhop of* Lincoln *adviſed and confirmed it, and* Theobald *Archbiſhop of* Canterbury, *is the firſt Witneſs to it* (*y*); yet this he falſly produces for an arbitrary Lay Conſecration, and baſely concealing theſe old Teſtimonies of the Biſhops conſent to, and confirmation of the Founders Grant (which he muſt needs ſee, while he tranſcribed ſo much of the Charter;) he tells us, this was confirmed long after by *Richard* (it ſhould be *Robert Groſthead*) Biſhop of *Lincoln*, *An.* 1250, as if this had been the firſt Epiſcopal confirmation, whereas 'tis evident he knew it was confirmed by his Predeceſſor from the firſt foundation, *viz.* 120 year before, what credit can be given to ſuch a Hiſtorian? *Pag.* 325. The Tithes belonging to *Tinemouth*, confirmed by *Henry* the Firſt to S. *Albons*, were given before to that Abby by *Roger de Mowbray*, *By the leave of the King and the Archbiſhop* Lanfranc (ſaith M. *Paris* in the place cited by Mr. *S.* (*z*)); and a little after *By the Counſel of Archbiſhop* Lanfranc, *Id. ibid.* Pag. 333.

(*w*) Mon. *Angl.* Tom. 2. p. 137.

(*x*) Monaſt. ib.

(*y*) Monaſt. ib. pag. 138.

(*z*) *M. Paris.* vita *Pauli* Abbatis pag. 51.

The firſt founder and endower of the Abby of *Lewis* was *William*, the firſt Earl of *Warren*, whoſe Charter yet extant declares, he did it *by the advice of* Lanfranc *the Archbiſhop*, and this Charter is ſigned both by the King and his Biſhops in a Council at *Wincheſter* (*a*). And the *Monaſticon* affords ſeveral ſuch Examples: *Walter de Gaunt* confirms and endows *Bardeney* Abby, *Conſilio* Radulphi *Cantuarienſis* (*b*). *Robert de Toteney* gives Tithes to a Cell of S. *Albans*, *Conſilio D.* Lanfranci *Archiepiſcopi* (*c*). *Roger de Montgomery* founds and endows the Abby of *Shrewsbury*, *Conſilio* Roberti *Epiſcopi*, who alſo witneſſes his Charter (*d*). *Robert Fitzwalter* gives Tithes to the Abby of *Horſham*, *by the order and conſent of* Herbert *Biſhop of* Norwich (*e*). *Alberic de Vere* gives the Church of *Hegeham* to the Nuns there, *at the deſire of* Richard *Biſhop of* London (*f*), with many more like Examples (*g*). Now if they deſired, adviſed, and ordered the Patrons to make theſe Grants, what queſtion can there be, but they confirmed them?

(*a*) Monaſtic. *Angl.* Tom. 1. p. 615.
(*b*) Ib. p. 142.
(*c*) Ib. p. 327.
(*d*) Ib. p. 376.
(*e*) Ib. p. 416.
(*f*) Ib. p. 1020.
(*g*) Mon. *Angl.* Tom. 1. p 650, 729, 764. & T. 2. p 86, 92, 96, 274, 298, 307, &c.

Secondly, Even where the Original Charters are loſt, there is clear Evidence yet extant, that the Lay-granters had the conſent of the Biſhops, and did aſſign them by their Authority: So the Charter of *Alberic de Vere*; in Mr. *S. pag.* 300. concerning the founding of *Colm* a Cell of *Abingdon*, is recorded to have been confirmed by the Authority of the King, and of the Biſhop of the Dioceſs, *Mauricius* (*h*). *Pag.* 308. Mr. *S.* confeſſes the Tithes of *Wauretun*, granted to *Oſney* by *Hugh de Crofts*, *An.* 1192. were confirmed by *William* Biſhop of *Hereford*, who was conſecrated *An.* 1186, and ſo was Biſhop there at the time of the firſt Grant. *Pag.* 313. The portion of Tithes in *Halegele*, given by *Henry de Port*, *for the love of* Ralph *the Biſhop of* Rocheſter, *An.* 1108. undoubtedly had his confirmation, who was conſecrated Biſhop there that very year. *Pag.* 323. The ſame Hiſtorian which mentions the aſſignations of Tithes by *Hugh de Trotteſclive*, Abbot of S. *Auguſtines*, ſaith of the ſame Abbots donations, *They were confirmed by the Letters Patents of* Theobald *the Archbiſhop* (*i*). *Pag.* 343. The grant of Tithes of *Wlhaveſhull* to the Abby of

(*h*) Mon. *Angl.* Tom. 1. p. 437.
(*i*) Chron. *W. Thorn.* A. Dom. 1128. col 1779. & col. 1828.

of *Perſore*, by *John de Muchgroſſe* in King *Johns* time, is but a later confirmation of an elder Grant; but upon the burning of that Abby, and loſs of their Evidences, divers perſons upon an Inqueſt do ſwear, *That all their Tithes were confirmed to them by the Biſhops of* Canterbury, *and by* John *Biſhop of* Worceſter (conſecrated *An.* 1140) long before this Grant (*k*). But the plaineſt inſtance of this kind is, that Charter of *W. Peverel* to the Monks of *Hatfield*, which Mr. *S.* brings in as an inſtance of arbitrary Lay Conſecrations, *pag.* 329. but durſt not cite it at large, becauſe it quite overthrows his falſe Opinion; the words of it are, *To the Reverend Lord*, R *Biſhop of* London, *to all his Archdeacons and Prebends, eſpecially to* W. *the Dean*, W. Peverel *ſendeth Greeting* —— (and after the recital of the ſeveral Churches and Tithes he had granted, the Charter ends thus) —— *which Donation and Conſtitution I entreat you graciouſly to grant and conſent to, as I am Lord of the place, and your Friend, circ. An.* 1120 (*l*). What can be plainer than this, to ſhew that Lay Patrons had no power to grant Tithes of themſelves? but were forced to petition the Biſhops to confirm them. So in the Chartularies of *Rocheſter*, the Tithes confirmed by *Walter*, Biſhop there, are ſaid to be *Tithes which* Gundulphus *his Predeceſſor had given and granted them by the gift of the Patrons, and the Rectors conſent* (*m*); and *Johannes Sarisburienſis* ſpeaks of the Church of *Effingham*, *which at the Patrons requeſt the Biſhop of* Wincheſter *gave the Monks* (*n*). But if we look into the *Monaſticon*, there are very many Evidences in the very Lay-Charters of the firſt granters of Tithes, to prove that theſe Grants were confirmed by the Biſhops Authority and conſent (though the Biſhops Charter be not now to be found.) So *William de Percy* declares, that *Thomas* Archbiſhop of *York* (*An.* 1109) was a granter and a witneſs of his donation to *Whitby* (*o*). *Leofric*, founder of *Coventry*, got a Licence from the Pope before he made his own Charter (*p*). *Roger Montgomery* founded and endowed the Abby of *Shrewsbury*, *by the Grant of the King of* Lanfranc *the Archbiſhop, and* Peter *Biſhop of the Dioceſs* (*q*). *Radulphus Pincerna* in endowing *Alceſter*, ſaith,

(*k*) Mon. *Angl.* Tom. 1. p. 206.

(*l*) Mon. *Angl.* Tom. 1. p. 330.

(*m*) An. 1150. Chart. *Roffenſ.* p. 23.

(*n*) *Joh. Sarisb.* Ep. 28. p. 504. & Ep. 84. p. 521.

(*o*) Monaſtic. Tom. 1. p. 73.

(*p*) Ib. p. 303.

(*q*) Ib. p. 376, & 381.

ſaith, *He did follow the Authority of* Theobald *Archbiſhop, and of* Simon *Biſhop of* Worceſter, *and other Biſhops* (*r*). *Wil. de Breoſa* granting Tithes to *Abergavenny*, engages he will procure *the Charters of King* Henry *the Second, of the Archbiſhop, and of the Biſhop of* Landaffe, *to confirm his Grant* (*s*). *Nigellus* of *Munnevile* declares, he had *Anſelms* conſent to his Grant of Churches to *Folkeſton* Priory, *An.* 1095 (*t*). *Robert de Lacy* and *Hugh de Val*, had *Thurſtan* Archbiſhop of *Yorks* conſent to their Grant of Tithes to *Pontefract* (*u*). *Simon*, Earl of *Northampton*, in his Grant of the Church of *Saltry* to the Monks there, *engages to ſecure them from the Biſhop of* Lincoln, *and the Parſon of the place* (*w*). *Picot*, and *Hugolina* his Wife, declare, they had given two parts of their Tithes to a Monaſtery, *having firſt had the conſent and allowance of* Remigius *Biſhop of* Lincoln (who was conſecrated *An.* 1070) (*x*). *Nicholas de Greſely* gives a Church to *Kenilworth*, *by the aſſent of* Roger *Biſhop of* Cheſter (*y*). The Earl of *Buckingham* deſired *Joſeline* Biſhop of *Salisbury* to grant the Church of *Bradly*, with the Tithes, to the Priory of *Nutley* (*z*). *William* Earl of *Suſſex* gives Lands and Tithes to *Buckenham* Priory, by the advice of *William* Biſhop of *Norwich* (conſecrated *An.* 1151), and *that his Grant may be valid, he prays it may be confirmed by Royal and Eccleſiaſtical Authority* (*a*). *Robert* Earl of *Mellent* endows the Priory *de Prato* with Lands and Tithes, *by the Grant of King* Henry *the Firſt, and* Robert *Biſhop of* Lincoln (conſecrated *An.* 1107) (*b*). And is it likely all theſe Great men would be thus careful to get the Biſhops aſſent and confirmation, if it were not neceſſary? I might give many more Examples (*c*), but theſe are ſufficient to ſhew, that though the original Grants of Biſhops be now loſt, yet the cuſtom of the Age made it neceſſary to procure them.

(*r*) Ib p. 470.

(*s*) Ib. p. 558.

(*t*) Ib. p. 560.

(*u*) Ib. p. 649.

(*w*) Ib. p. 850.

(*x*) Monaſtic. Tom. 2. p. 29.

(*y*) Ib. p. 115.

(*z*) Ib. p. 156.

(*a*) Ib. p. 274.

(*b*) Ib. p. 313.

(*c*) Monaſtic. Tom. 1. p. 22, 419, 440, 644, 729. & Tom. 2. pag. 145, 220, 352, 423, 462, &c.

Thirdly, Where the old Charters of Biſhops confirming the firſt Grant are not to be found, yet there are later Confirmations which refer to former Grants, and clearly enough prove there were ſuch extant in ancient time. Thus thoſe Tithes which Mr. *S.* out of the Chartularies of *Abingdon*,

bingdon, pretends were arbitrarily conſecrated by Lay-men, are confirmed by Pope *Eugenius* (not *An.*1152, as Mr. *S.* miſtakes, but) *An.*1146. where there is named the Tithes of *Lakin*, *Offinton*, and *Weckenfield*, "which, with all the "Poſſeſſions and Goods, which they then juſtly and Cano-"nically poſſeſſed or could hereafter acquire by juſt means, "the Pope doth there confirm to them (*d*); whence we may conclude, that *Abingdon* did then poſſeſs *Lakin*, *Offinton*, *Weckenfield*, and other Tithes (not by arbitrary Lay Grants, but) by Biſhops Charters and Confirmations, for this only in the Popes account was a juſt and Canonical way of poſ-ſeſſing Tithes. And note here, That all Popes Bulls ever have this clauſe, and confirm no Poſſeſſions to Monaſteries, but ſuch as they poſſeſſed *juſtly and Canonically*; whence it is probable the Monks muſt ſhew their Biſhops conſent to the firſt Grant, or elſe no Bull from *Rome* could be obtained. And for *Abingdon*, there is a Charter of King *Henry* the Firſt, confirming divers poſſeſſions to it, ſigned by himſelf, his Son *William*, his Queen, and the two Archbiſhops, with the Biſhops of *Exeter* and *Wincheſter* (*e*), which Charter muſt be made before young Prince *William* was drowned, that is, before the year 1121; and therefore there was Conſent of Biſhops to this Abbies Poſſeſſions long before the Popes Bull. So *pag.*309. for the Tithes given to the Priory of *Giſeburn*, about the year 1240, there is a Charter of *Richard* Biſhop of *Durham*, dated *An.*1311, relating, "That *Hugh* his Predeceſſor (*An.*1154) had anciently con-"firmed the Tithes given to that Priory which lay in the "Dioceſs of *Durham*, and other of his Predeceſſors had done the like (*f*); and in all probability the Archbiſhops of *York* had done the like for what lay in that Dioceſs; and ſo none of theſe were Arbitrary Conſecrations. *Pag.*311. The Church of *Waltun* (ſaith Pope *Adrian*'s Bull in the Chartularies of *Rocheſter*) "was given by *Roger Bigod* and "his Heirs, and granted by the Biſhops of *Norwich*, *Her-bert*, (Conſecr. 1088) *Everard*, and *William*: ſo that this could be no arbitrary Lay Grant, ſince *Herbert* Biſhop of *Norwich* lived at the ſame time with *Roger Bigod* the Foun-der

(*d*) Mon. *Angl.* Tom.1.p.107.

(*e*) Ib. Tom.1. p.105.

(*f*) Monaſt. Tom.2.p.145.

der (which was not *temp. Rich.* 1. as Mr. *S.* groſly miſtakes, but) *An.* 1088, who was firſt Earl of *Norfolk*, and with his Son *Hugh* gave this Church to *Felix-ſtow*, a Cell of S. *Andrews*, *Rocheſter*, as may be ſeen by the Charter of King *William Rufus*, directed to the Biſhop of *Norwich* for confirmation of this Grant (*g*). *Pag.* 335. *Saher de Quincy*, *An.* 1203, did but confirm a former Grant of the Tithes of *Eynesbury* to S. *Neots*, for thoſe Tithes had been confirmed to that Priory ſome years before, *viz. A.* 1194, by the Bull of Pope *Celeſtine* (*h*). But the *Monaſticon* will fully clear this matter. The Confirmation of *Bartholomew*, Biſhop of *Exeter* (*An.* 1159) "aſſigns divers Churches and "Tithes to the Abby of *Taveſtoc*, according as the Char-"ters of his Predeceſſors, made to this purpoſe, did more "fully teſtifie (*i*). *Walter*, Biſhop of *Coventry*, confirms Churches and Tithes to *Lilleſhull*, formerly granted by "Pope *Eugenius*, by the Archbiſhop, and by *Roger* his Predeceſſor (*k*); which *Roger* conſented to the Founders firſt foundation. *Hugh* Biſhop of *Lincoln* declares, that his Predeceſſors had confirmed all thoſe Churches and Tithes to the Abby of *Bardeney*, now confirmed by him (*l*): So *Hubert* Archbiſhop of *Canterbury* ſaith, "The Tithes he "confirmed to *Cumbermere*, had before been confirmed by "his Predeceſſor *Baldwin*, and by *Richard* Biſhop of *Coventry* (*m*). *Richard* Biſhop of *Wincheſter* confirms a Church to S. *Mary Overies*, formerly confirmed by *William* his Predeceſſor (conſecrated *An.* 1107) (*n*). The Founder of *Pontefract* gave ſome Tithes to it, "and theſe Benefices were "confirmed by the Authority of *Thomas* the elder Archbiſhop of *York* (An. 1070) (*o*). Pope *Gregory* alſo confirms Churches and Tithes to the Priory of *Catesby*, which "our Reverend Brother, *Hugh*, Biſhop of *Lincoln*, and his "Predeceſſors have granted (*p*). Wherefore we muſt not argue, that there were no elder and original Biſhops Charters to confirm the firſt Grants of Tithes, becauſe only ſome later Confirmations are extant at this day: yet this is a fallacy which Mr. *S.* frequently, and (I fear) deſignedly uſeth.

(*g*) Ib. p. 29.

(*h*) Monaſt. Tom. 1. p. 370.

(*i*) Ib. p. 998.

(*k*) T. 2. p. 145.

(*l*) Ib. p. 850.

(*m*) Ib. p. 914.

(*n*) Ib. p. 940.

(*o*) T. 1. p. 660.

(*p*) T. 2. p. 897.

Fourthly,

Fourthly, The Cuſtom of Lay-mens preſenting their donations of Tithes to their Biſhops, that they might give them to Monaſteries, either at the firſt Conſecration of Abby Churches (always done by a Biſhop) or afterwards, ſhew their conſent was had. Both theſe Cuſtoms are remembred by Mr. *S.* for *pag.* 324. thoſe Tithes offered at the building of *Crowland* Church, no doubt were confirmed by the Biſhop who conſecrated that Church: and *pag.* 350. The renewed Donations to the new Nuns of *Ambresbury*, were confirmed by *Richard* Archbiſhop of *Canterbury*, and the other two Biſhops who introduced them (*q*). But the *Monaſticon* will more fully ſhew this Cuſtom. The Tithes given to the Abby of S. *Werburg*, by *Hugh* Earl of *Cheſter* and his Knights, were preſented at the dedication thereof by *Anſelm*, and *Hervey* Biſhop of *Cheſter* (*r*). *William de Albeny*, by offering his Knife upon the Altar of *Wymundham*, gave Tithes to it at the Dedication thereof by *Everard* Biſhop of *Norwich* (*s*). The Founder of *Hurley* Priory declares, that at the Dedication, "*Oſmond* Biſhop of *Sa*"*liſbury*, by Epiſcopal Authority confirmed all his Donations (*t*), and this Biſhop died *An.* 1099. *Alan* Earl of *Richmond* endowed *Romburg* with Tithes, in the preſence of *Everard* Biſhop of *Norwich*, whoſe Charter confirming them is yet extant (*u*). At the Dedication of *Cadwell* Church, the Inhabitants give the Tithes of *Penbray* and *Pennalth*, by the exhortation and aſſent of *Roger* Biſhop of *Cheſter*, who conſecrated it (*x*). *Robert Fitz-martyn* ſolemnly offers divers parcels of Tithes to a Priory in *Wales*, when *F.* the firſt Abbot was inſtalled by *Bernard* Biſhop of S. *Davids*, "the ſaid Biſhop granting, whatever of my "Tithes I had given to that Abbot, as his Charter ſpeaks (*y*). *Geoffry* Earl of *Eſſex* endows *Walden* with divers Churches, "in the hearing, and by the aſſent of the three Biſhops of *London*, *Ely*, and *Norwich* (*z*). *Miles*, Conſtable of *Glouceſter* endows *Llanthony* with a Church, and divers portions of Tithes, "by the hand of *Robert* Biſhop of *He*"*reford*, on the day and hour when the Church was dedicated, *An.* 1137 (*a*). The Grants of *Robert* Earl of *Mellent*

(*q*) *Hoveden. An.* 1177. *pag.* 320.

(*r*) Monaſt. Tom. 1. p. 201.

(*s*) Ib. p. 339.

(*t*) Ibid. p. 363.

(*u*) Ib. p. 404.

(*x*) Ib. p. 424.

(*y*) Ib. p. 445.

(*z*) Ib. p. 449.

(*a*) Tom. 2. pag. 70.

lent to the Priory *de Prato*, were all confirmed by *Robert* Biſhop of *Lincoln*, when he dedicated the Church, *An.* 1107 (*b*); all which doth ſtill plainly prove, the Biſhops ratified the firſt Grants of Tithes to Abbies.

(*b*) Ib. p 313.

And for ſuch Tithes as were given afterwards, Mr. *S.* hath ſhewed *pag.* 344, by the Charter of the Biſhop of *Wincheſter*, that the cuſtom was to come and preſent them to a Biſhop, and by his hand to make the Oblation; and the *Monaſticon* largely confirms this uſage. *Joel Fitz-Alured* gives Churches and Tithes to *Barnſtaple* Priory, "by the "hands of *William* Biſhop of *Exeter* (*An.* 1107) (*c*). A like Gift is made to the Priory of S. *James* at *Exeter*, "by "the hand of *Robert* Biſhop of *Exeter* (*d*). *Henry* Biſhop of *York* (*An.* 1142) in his confirmation of Tithes to *Monkton*, declares, "they were given in his preſence (*e*). *Richard de Wicha* offers up his Charter of the Tithes of *Sally* upon the Altar at *Taveſtoc*, and the Biſhop receiving it ſaid, *I as Dioceſan Biſhop, do by my Epiſcopal Authority confirm the aforeſaid Donation* (*f*). The Patron of the Chappel of *Alſwic* offers it, with its appurtenances, on the Altar of the Holy *Trinity*, "in the preſence of *Thomas* Archbiſhop of *Canterbury*, and gave it to thoſe Monks by his hand (*g*). So the Church of *Stanes* was given by the Patron to the Priory there, "in the preſence of *Roger* the Biſhop, into whoſe "hand he put it, and then the Biſhop confirmed it (*h*). *William de Veſcy* gives the Church of *Ancaſter* to the Canons of *Malton*, "by the aſſent and counſel of *Robert* Bi- "ſhop of *Lincoln*, and put this gift in his hand, and confirmed it by his Teſtimony (*i*). *Philip de Kyme* gives *Sotby* Church to *Bardeney*, "putting it into the hands of *Robert* "Biſhop of *Lincoln*, humbly praying that he would make "that Act valid, and confirm it by his Authority (*k*). But Mr. *S.* himſelf hath a famous inſtance of *William* Earl of *Warren*, who, by the Biſhop of *Wincheſter*'s cutting of his Hair before the Altar, in the preſence of four other Biſhops at a renewed dedication of S. *Pancratius* Church in *Lewes*, gave all his Tithes to that Abby, *pag.* 340. And whoſo deſires more Examples of making theſe Grants in the

(*c*) Monaſtic. Tom. 1. p 684.

(*d*) Ib. p. 645.

(*e*) Ibid. p. 476.

(*f*) Ib. p. 1002.

(*g*) T. 2. p. 80.

(*h*) Ib. p. 127.

(*i*) Ib. p. 817.

(*k*) Ib. p. 850.

the Biſhops preſence, and by their hands, may conſult the places in the Margent (*l*). And note here, that Lay Patrons were ſo far from thinking they could arbitrarily conſecrate their Tithes to what Monaſtery they pleaſed, that it is evident they petitioned the Biſhops to confirm them. *Agnes de Arches* having given a Church to *Nunkelling*, "beſeeches *William* Archbiſhop of *York* to grant "and confirm it (*m*). Earl *Baldwin* petitions *Robert* Biſhop of *Exeter* to confirm his Grant to the Priory of S. *James*, *An.* 1146 (*n*). *William* Earl of *Warren* humbly prays the Biſhop of *Norwich*, to grant the Church of *Melewd* to *Caſtle-acre* (*o*). *Avice de Romelli* directs her Charter to the Biſhop of *Lincoln* and Archdeacon of *Leceſter*, "beſeeching them for the love of God to make her Act "valid, and to confirm it by their Authority (*p*). And many more ſuch Petitions are to be found (*q*), which ſhews how untruly Mr. *S.* pretends, that Biſhops confirmations were never deſired nor needed by Lay-Patrons, but only procured by the Monks afterward, for their own ſecurity againſt the Canons of the Church. I hope it is now very evident, that Lay-Patrons deſired and procured them, and whether the firſt Charters be now extant or no, that undoubtedly there were ſuch Charters obtained to all theſe Grants.

(*l*) Mon. *Angl.* Tom. 2. p. 234. ibid. 245.

(*m*) Monaſtic. *Angl.* T. 1. pag. 475.

(*n*) Ib p. 644.

(*o*) Ib. p. 638.

(*p*) T. 2 p. 97.

(*q*) Tom. 1. p. 1025, & T. 2. p. 127, 230, 276, 277, & 893.

Wherefore as to the reſt of Mr. *S.* his Inſtances, we ſhall only make ſome brief remarks on them and ſo diſmiſs them. And, *Firſt*, divers of theſe which he calls arbitrary Lay Conſecrations were granted by Charters directed *To the Archbiſhops and Biſhops*, or elſo *to the Biſhop of the Dioceſs*; and that intimates, that the Biſhop was to confirm this Charter afterward. So *pag.* 309. the Tithes of *Lyum* are given to *Gisburn* Priory by a Charter of *Robert Brus*, the Founder, directed *To the King of* England, *and the Archbiſhop of York* (*r*), becauſe both the King and Biſhop were to confirm the Grant. *Pag.* 310. The half Tithe of *Tarentford* is granted to the Monks of *Rocheſter*, by King *Henry*'s Charter, directed to *Anſelm* the Archbiſhop, and ſigned by two Biſhops (*s*). The ſame Kings confirmation of *Eltham*

(*r*) Monaſtic. Tom. 2 p. 147.

(*s*) T. 1. p. 30.

and *Bilſintun* (mentioned in Mr. *S. pag.*311) is directed to *Anſelm* alſo, and atteſted by a Biſhop (*t*). *Pag.*319. *Geoffry* Earl of *Eſſex*, his Charter to the Nuns of *Clerkenwell* is directed to the Archbiſhops, and ſigned by three Biſhops (*u*). *Pag.*345. Mr.*S.* himſelf produces a Charter of *Geoffry Fitz-Robert*, granting Tithes to *Ipſwich* (*An.*1152) which is directed *To* William *Biſhop of Norwich*, who no doubt was to confirm it. *Pag.* 352. *Henry* the Firſt's confirmation of Tithes to the Priory of *Mountague*, is directed *To* John *Biſhop of the Dioceſs* (*w*); and *Henry* the Second confirms the ſame, by a Charter directed to the Archbiſhops, and ſigned by four Biſhops (*x*): But of this, Inſtances are ſo very many, it is needleſs to be particular (*y*); yet this ſhews, that the Conſecration of Tithes were not arbitrary, for if ſo, why ſhould the Grants be directed to the Biſhop.

(*t*) Ibid.

(*u*) Ib. p. 433.

(*w*) Ib. p. 668.

(*x*) Ibid.

(*y*) Ib. p. 142, 354, 380, &c.

Secondly, Some other of Mr. *S.* his Inſtances of Arbitrary Conſecrations are the Acts of Biſhops, who no doubt acted agreeable to the Canons, and ſo if they were not Biſhops of the Dioceſs themſelves, had undoubtedly the Dioceſans conſent. So *pag.*310. there is a grant of *Ralph* Archbiſhop of *Canterbury* (*An.*1114) among his arbitrary Conſecrations; but indeed it is a Confirmation of Tithes given by others in his Dioceſs. *Pag.* 316. The Tithes of *Wickham* were firſt given by *Gundulphus* Biſhop of *Rocheſter*, whoſe Fee that Town was, and when he granted the Land to *Godfry de Talbot*, he reſerved the Tithes to the Monks of *Rocheſter*; from *Talbot* the Land came to *Columbers*, who (upon a Suit between the Parſon of *Frendesbury* and the Abbot) only declares what he found in his Deeds (as the Chartularies of *Rocheſter* ſhew,) yet Mr. *S.* hath the confidence to produce this as an arbitrary Lay Conſecration. *Pag.*321. The gift of *Odo*, who was Biſhop of *Bayeux*; and *p.*337. that of *Ael* Biſhop of *Carliſle*, were undoubtedly Canonical Grants, and ſo ought not to be produced by Mr. *S.* among arbitrary Lay Conſecrations.

Thirdly, There are others of his Examples, which he produces as if they were Original Conſecrations of Tithes, when indeed they are only the Confirmations of the Lay-donors

donors Heirs, obtained by the Monks after long possession of Tithes, confirmed to them by Ecclesiastical consent many years before, some of which we have already taken notice of; and such is the Tithe of *Tarentford*, pag. 310, confirmed by King *William Rufus* (*a*), yet produced by him, as if *Henry* the First originally confirmed it. So *pag.* 316. the Tithes of *Wickham* Canonically given by *Gundulphus*, are by him produced as a Lay Consecration of *Columbers*. *Pag.* 319. *Walter de Clifford*'s confirmation of *Hamensec*, *&c.* An. 1200, was given long before, and confirmed by the Bishop of *Hereford* at least 70 years before (*b*). *Pag.* 324. The Abbot of S. *Albans* gift of *Cayshо* and *Watford* Tithes, *An.* 1235. was no other but a grant of Tithes, confirmed to them by Pope *Honorius*, *An.* 1218; which Bull of *Honorius* mentions Eight preceding Popes confirming their Possessions to them, and the first was *Calixtus*, *An.* 1120 (*c*): so that these Tithes were setled in the Abby above an hundred years before. *Pag.* 325. The Tithes belonging to *Tinemouth*, were given to S. *Albans* by *Roger de Mowbray*, by the leave of the King and Archbishop *Lanfranc*, as *Math. Paris* shews (*d*), and were confirmed by a Charter of King *Williams*, directed to the Archbishop, and to the Bishop of *Durham* (*e*), long before King *Henry* came to the Crown; whose Confirmation of this old Grant, setled by Ecclesiastical consent before, Mr. *S.* produces for an Arbitrary Consecration. Other such like wilful mistakes are those Confirmations of S. *John* to *Boxgrave*, *Seld.* p. 330. That of *Muchegrosse* to *Persore* Abby, *pag.* 344. and of King *William* the Conqueror to *Westminster*, p. 351.

(*a*) Monast. Tom. 1. p. 29.

(*b*) Ib. p. 420.

(*c*) Ib. p. 59, 60.

(*d*) Vit. *Pauli* Abbatis, p. 51.

(*e*) Monast. Tom. 1. p. 334.

Fourthly, Others of his Examples are too late in time, and were made long after the year 1200, and so could not be Arbitrary Consecrations, because he grants Parochial Right was then so firmly setled, that the Laity (by his own confession) could not so dispose of their Tithes. Under this Head we may reckon the Grants of *Peter de Brus* to *Gisburne*, An. 1239, 1242, 1246 (*f*). That of *Maud de Mandevil* Countess of *Essex*, to *Clerkenwell* (*g*); for she was not Countess of *Essex*, till *An.* 1227. That of the

(*f*) Hist. *Tithes*, Ch. 11. p. 309.

(*g*) Ib. p. 320.

(h) Ib. p. 324. (i) Ib. p. 344. Abbot of S. *Albans*, *An.* 1235 (*h*), and that of the Prior of *Lewes*, *An.* 1260 (*i*); the cuſtom of the Time acknowledged by Mr. *S.* ſhews all theſe were impertinently alledged here.

Fifthly, Many of his Inſtances are not concerning Parochial Tithes, as that of *Geoffry* Earl of *Eſſex* is a Grant of (k) Ib. p. 320. the Tithe of Meat uſed at his Table (*k*). That of *William* Earl of *Warren*, is of the Tenth penny of his Rents in Mony; and it was for detaining of this that the Archbiſhop blames his Widow (*l*). So alſo the Tithes of *Veniſon* may be reckoned an extraordinary Tithe (*m*), as well as that of *Whales* (*n*); yet moſt of theſe Grants were by Eccleſiaſtical conſent, as is ſhewed before. And for all thoſe Grants of Abbots and Covents (which did diſpoſe of Tithes ſometimes, anciently ſetled on them by Biſhops Charters and the Popes Bulls) they cannot be reckoned Lay Conſecrations; and beſides they were not arbitrary, for his own Hiſtorian, *Thorn*, who writes the Hiſtory of S. *Auguſtines Canterbury*, aſſures us, That the Abbots there uſe to have the confirmation of the Archbiſhops, even to (o) Chron. W. Thorn. col. 1779 & 1828. theſe diſpoſitions of their own Tithes (*o*). And he brings divers of theſe Abbots Leaſes of Tithes ſetled Canonically on their Abbies, among his Arbitrary Conſecrations (*p*); and that which he falſly calls a grant of Tithes from *Alexander* Prior of *Stanelgate* to *Clerkenwell* (*q*), is a plain Leaſe of Tithes under the yearly Rent of Ten ſhillings, as the Deed yet extant ſhews (*r*). So that I hope now I may conclude, that Mr. *S.* hath brought no ſufficient proof of any common uſe of Arbitrary Lay Conſecrations, for I have particularly diſproved almoſt every one of his Inſtances, and fully proved the cuſtom of that Age could not admit any ſuch kind of Conſecrations; ſo that if (for want of Books and Records) there be five or ſix among Mr. *S.* his vaſt heap, which are not diſproved by name, yet it is plain enough they alſo were confirmed as the reſt were. But leſt any ſcruple ſhould remain, I will add two Arguments to prove there could be no Arbitrary Lay Conſecrations in this time.

(p) Hiſt. Tithes, p. 322, 323.

(q) Ib. p. 319.

(r) Monaſtic. Tom. 1. p. 623.

First,

Firſt, Becauſe Lay-men could not give Parochial Tithes without Biſhops conſent, in regard Parochial right was ſo firmly ſetled all the time when theſe very Charters (which Mr. *S.* produces for Arbitrary Conſecrations) were made, as I will prove out of him. *Faricius* Abbot of *Abingdon*, *An.* 1158. would not receive a gift of Tithes from *Offinton*, "leſt he ſhould diminiſh the ancient right of the Pariſh Church; and till they had agreed to let the Pariſh Rector have Twenty four Sheaves out of every Acre, (which is a full Tenth part in ordinary Land) according as he uſed formerly to receive, he would not accept of a ſecond Tithing to the Abby, which here we ſee was paid beſide Parochial Tithe (*s*); and thus we muſt underſtand thoſe ſecond Tithes of Fruits and Corn, at *Staves* and *Sandford*, given to the Nuns of *Kington* (*t*), *viz.* of Tithes paid over and above Parochial Tithes. And I appeal to any impartial Reader, if the ſetled right of Pariſh Tithes be not plainly declared in theſe Phraſes, ſo often occurring among theſe very Inſtances of Mr. *S.* *viz.* *De rebus quæ Decimari ſolent* (*u*); *Quæ Decimari poſſunt & debent* (*w*); *De omnibus unde Decimæ dantur* (*x*); *De quibus Decima danda eſt, & datur* (*y*); *De quibus Decima rectè datur* (*z*); *Quæ Decimari debent more Catholico* (*a*); *Undecunque Decimæ S. Eccleſiæ ſpectant, aut provenire debent* (*b*); *Decimam quam Parochiani dant* (*c*); *Quæ Parochiani debent reddere, & facere ſuæ matrici Eccleſiæ* (*d*); *Eccleſiam cum rectitudine ſua* (*e*) *&c.* All theſe plainly ſhew that Parochial Tithes were uſual, and due to be paid by Pariſhoners to their Pariſh Church, and were a right belonging thereunto, ſetled by Law, Preſcription, and ancient Cuſtome; and if ſo, how then could any Arbitrary Conſecrations be made out of them? We ſee by that Suit between the Parſon of *Frendſbury* and the Chantor of *Rocheſter*, that Parochial right was ſued for, before the year 1200, for the Parſons claim was grounded upon Parochial right (*f*). And the Parſons conſent was neceſſary to the Patrons alienation of Tithes; ſo that *Alured*, Prieſt of *Stokes*, about *An.* 1120, joyns with the Patron in the gift of that Church to the Canons of *South-*

(*s*) Hiſt. *Tithes*, Ch. 11. p. 302.

(*t*) Monaſt. Tom. 2. p. 288.

(*u*) Hiſt. *Tithes*, Ch. 11. p. 305, 306, 307, 324.

(*w*) Pag. 308, 336.

(*x*) Pag. 319.

(*y*) Pag. 328.

(*z*) Pag. 328.

(*a*) Pag. 359.

(*b*) Pag. 333.

(*c*) Pag 339.

(*d*) Pag. 320.

(*e*) Pag. 302.

(*f*) Hiſt. *Tithes*, p. 317.

Southwark (*g*), and *Robert* Prieſt of *Walborton*, and *William* Prieſt of *Bernham*, are Witneſſes to the Grants of their ſeveral Churches, *An.* 1180 (*h*); yea, *Sariſburienſis* informs us, that *Jus Parochiale cum Decimis*, was judicially adjudged to *Robert de Urgot* before the year 1150 (*i*). Which proofs, with very many in the former Chapter do ſo fully aſſure us, of the ſettlement of Parochial right long before theſe pretended Grants, that this reaſon alone might ſuffice to ſhew they were not Arbitrary.

(*g*) Monaſt. Tom. 2 p. 85.
(*h*) Monaſtic. Tom. 1. p. 595.
(*i*) *Sariſb.* Fp. 21. pag. 503.

Secondly, If the Laity could have made any ſuch Grants of Tithes, the Monks durſt not have received them, for fear of diſpleaſing the Pope and the Biſhops; for Mr. *S.* tells us, "The Decrees both of the Pope and General "Councils were anciently againſt it — and the Provincial "or National Synods here had like Canons forbidding it, "*viz.* *An.* 1103, in a Council under *Anſelm*, Monks are "forbid to receive Churches, unleſs from the Biſhop (*k*). Another under the Popes Legate, *An.* 1125, ordains, That "no Abbot, Prior, or Monk, ſhall take a Tithe or Eccle-"ſiaſtical benefit of a Lay mans gift, without the autho-"rity and aſſent of their own Biſhop, and if he do, the "donation is declared void (*l*) — and the King (ſaith Mr. *S.*) "gave ſome allowance to theſe Canons (*m*); but if he durſt have told the truth, That King *Henry* the Firſt confirmed theſe Canons by his Royal Authority, and therefore is it likely this very King ſhould confirm ſo many arbitrary Lay Conſecrations, as Mr. *S.* pretends? or can any think the Monks durſt (in deſpite of the Popes Decrees, and Biſhops Canons, and the Kings Confirmation added thereto) frequently receive ſuch Conſecrations? I make no queſtion they dared not to do it without the Biſhops conſent, and therefore there was no Lay arbitrary Conſecrations in or about that Age, at leaſt no common uſe of them.

(*k*) *Spelm.* Concil. T. 2. p. 34.
(*l*) *Spelm.* ibid. pag. 36.
(*m*) Hiſt. *Tithes*, pag. 375.

§. II. This large and full proof will make it unneceſſary to be very particular in anſwering the remote Conjectures which Mr. *S.* ſtill brings to eſtabliſh his falſe Opinion.

The

The ancient Writ which he urges out of the Regiſter of *Fitz-herbert* (*n*), he confeſſes to be a ſingle Example, not ſeconded in any Law-Books elſewhere, yet againſt all reaſon he would have it refer to the common uſe of arbitrary Grants; but if any ſuch uſe had been common, there would have been more Examples of ſuch kind of prohibitions. Beſides, if this were not till King *Johns* time (as Mr. *S.* gueſſeth) then this *H.* Biſhop of *Lincoln*, was *Hugh Wallis*, who died not till 1234, and ſo it comes too late for the time he limited before. As for the Writ it ſelf, it prohibits a Cauſe of Tithes to be tried in the Spiritual Court, between the Precentor of *Lincoln* (on whom the Biſhop of *Lincoln*, after the cuſtom of his Predeceſſors had freely collated theſe Tithes) and the Prior of S. *Katherines*, who claimed them as due to one of his Pariſh Churches; and the reaſon of the prohibition is, *Becauſe the collation of theſe Tithes might devolve to the King by reaſon of cuſtody or eſcheat, ſince the King and many of his Nobles uſed to confer ſuch Tithes in ſome of their Demeſns.* But if this were a ſpecial priviledge of the King, and of many (not, all) his Nobles, and in ſome of their Demeſns only, then doubtleſs it was no Common right belonging to the Lord of every Mannor, as Mr. *S.* hath pretended, *pag.* 366. *Exceptio firmat regulam*, this ſpecial priviledge utterly deſtroys his univerſal liberty. Beſides Mr. *S.* fallaciouſly puts in the word [*liberè*] *pag.* 355. where he is ſpeaking of the King and his Nobles power to collate unto theſe Tithes, ſince the Writ apparently makes a difference between the Biſhops Power, and the Kings or his Nobles, in this particular, ſaying, *Epiſcopi loci prædicti liberè conferre conſueverunt*; but of the King and his Nobles it only ſaith, *Conferimus* (not, *liberè conferimus*) the reaſon of which difference is eaſily this, That Biſhops might collate to them without the leave or conſent of any other; but both the King and his Nobles muſt have the Biſhops conſent. And if (as he thinks, *pag.* 55.) theſe Tithes were *Decimæ ſeparatæ*, i. e. a portion taken out of ſome Pariſh Tithes, then we can prove, that the King and his Nobles had this priviledge (here

(*n*) Hiſt. *Tithes*, pag. 353.

(here claimed) by the Biſhops conſent at firſt, becauſe Biſhops did ſeparate ſuch Portions by their Authority, as appears by Chartularies of *Rocheſter*, where it is ſaid, *The ſeperate portion of* Crankburn *Tithes in* Hadlo *Pariſh, was by the Biſhops conſent*; and therefore at the Inſtitution of a Parſon of *Hadlo* the Biſhop uſed to accept thoſe ſeparate Tithes. Now if the King or Nobles had any ſuch priviledge from the Biſhop at firſt, it ſecures the right of the Clergy in diſpoſition of Tithes, and makes not for Mr. *S.* his purpoſe. I am ſure the Tithes of *Harewell* in his next example of a Prohibition (*o*), were given to the Abby of *Oſney* by the Founder, and are named in his Charter, *An.* 1129, as given by the advice and confirmation of the Biſhop of *Lincoln* (*p*), and therefore whatever Priviledge *Edmund* Earl of *Cornwall* (then Patron of the Abby in all probability) or the King upon the wardſhip or eſcheat of that Family, might pretend; they had it at firſt by a Biſhops Grant, and ſo this Prohibition doth not diſprove the Biſhops power of diſpoſing Tithes; and withal, ſince theſe Tithes were of old, *viz.* 150 year before this Prohibition (which was but *An.* 1279) ſetled Canonically on the Abby of *Oſney*, we may be confident *The collating of Tithes* here ſpoken of, could not mean arbitrary giving them to what place or perſon they pleaſed, but only the collating either of an Abbot to the whole Abby, or elſe of a Vicar to this Portion of Tithes, and neither of them do hurt our Opinion. Again, The ſpecial priviledge of Story, *To build a Church in his Demeſn, and to ſend his Tithes to what Church he pleaſed* (*q*), ſhews, this was no Common right; and by the uſe of the time we have reaſon to believe, this Privledge was granted him by the Pope and Biſhop of the Dioceſs; for if it were granted from the Secular Power, it could only allow him to do it without the Licence of any Secular Superior, but doth not exclude the Biſhops aſſent. And it is very ſtrange that Mr. *S.* ſhould firſt ſay, *It is ſpecially found, of this one man*, and then infer, that this liberty was common to all.

(*o*) Hiſt. *Tithes*, pag. 357.

(*p*) Monaſt. Tom. 2. p. 137.

(*q*) Hiſt. *Tithes*, p. 36.

§. III. As

§. III. As for the liberty challenged by Biſhops and Barons in King *John*'s time, to erect new Churches on their Land (*r*), it will not prove a liberty of Arbitrary Conſecrations in Lay-men, becauſe the Biſhop of the Dioceſs muſt dedicate this new Church, and ratifie the endowment thereof, or elſe the building was no Church, nor did the endowment legally belong to it; nor did this deſtroy Parochial right, but divide thoſe Tithes between two Churches by Eccleſiaſtical conſent, which were formerly enjoyed by one, both for convenience of the Pariſhioners, and encouraging of Devotion. And the Decretal of *Innocent*, cited by Mr. *S.* to prove this right of the Barons, doth not ſay, *They challenged this right without Epiſcopal conſent.* The Biſhops of *England*, in their Letter to *Innocent* about this matter, ſay, *By the Cuſtom of* England, *Tam Archiepiſcopi, quam Epiſcopi, quam etiam Laici, authoritate Dioceſani Epiſcopi poſſint Eccleſiam conventionalem in ſuo conſtruere fundo.* Gervaſ. Dorobern. *col.* 1612. And the Biſhop of *Canterbury*, for his new erection at *Lambeth had* the Confirmations of two preceding Popes, *Lucius* and *Urban*, and if the Archbiſhop did not challenge ſuch a right without Eccleſiaſtical Licence, why ſhould the Lay-Barons do it (*s*)? And if Lay Barons did challenge a right of building Churches without conſent, yet ſtill the Conſecration and Ratification of the endowment made the Biſhops conſent abſolutely neceſſary before the deſign could take effect. Again, the Caſes about Tithes in *Johannes Sariſburienſis* do ſhew, that when two Churches contended about Tithes, he that proved *Jus Parochiale*, carried them (*t*). And in the latter Example, Parochial right is proved by endowment at the Conſecration, *Epiſcopo* Londinenſe *præſente & approbante* (ſaith that Author:) ſo that *An.* 1150. Parochial right was a good plea in Law, and Endowments were made valid long before that, by Biſhops at the Dedication. The Donation of *William* Earl of *Warren*, which he here calls an Arbitrary Conſecration (*u*), he himſelf ſhews was made in the preſence, and by the conſent of divers Biſhops (*w*). Nor was there any need

(*r*) Ib. p. 361.

(*s*) *Innocent.* 3. Decret. l. 1. pag. 288.

(*t*) *Sarisb.* Ep. 21. p. 503. & Ep. 84. p. 521.

(*u*) Hiſt. *Tithes*, p. 362.

(*w*) Ib. p. 340.

for Mr. *S.* to run so low as *An.* 1265. to find an instance of Tithes sued for upon this ground, because they were arising within the Parish; for his former Instances out of *Sarisburienſis*, and divers others, confessed by him, and by me produced both in this and the former Chapters, abundantly shew that Suits upon that Title were far more ancient, and that his *English* Monks either are sadly mistaken in fixing the beginning of Parochial right, or he grosly misinterprets them: see *Chap.* X. §. *ult.* And surely the Parson of *Gillingham*, *An.* 1278 (*x*) durst not have complained of the King himself, in Parliament, for detaining Tithes due to him (as growing within his Parish) *De jure communi*, if the Parochial right had not been setled long before; and this complaint shews the injury was very unusual, and the Parson very confident of his right, which doth no way hurt, but strengthen our Opinion.

(*x*) Hist. *Tithes* p. 364.

§. IV. From the preceding evidence it is very plain, that whatever was done contrary to Parochial right, under pretence of either Common or Canon Law in this Age, it was an Innovation and a Usurpation upon that ancient right, which was setled here long before the Conquest; but neither before the year 1200, nor afterward, was it lawful to dispose of Parochial Tithes without the Bishops consent. And for the Tithes of vast Forrests, and land not lying within the limits of any Parish, the Canon Law determines, they belong to the Bishop (*y*); and *Herle*, an ancient Common Lawyer, *An.* 1333, is of the same Opinion (*z*). But it seems the King, by virtue of his Prerogative, challenged a peculiar Power to dispose of these Tithes to what Church or Monastery he pleased, as King *Henry* the First did the Tithes of *Inglewood* Forrest to the Priory of *Carliſle*; yet let it be observed, That *Henry* the First (as is proved before) generally made his Grants of this kind with the Bishops consent, and so in all probability he had such consent to this gift; but however it is evident these Grants were so little used, that both the Parson of the adjacent Parish, and the Bishop, severally claim

(*y*) Decretal. l. 3. tit. 30. pag. 1332.

(*z*) Hist. *Tithes*, p. 368.

claim these Tithes, and sue the Prior for them, which shews that it was not yet determined in Law, whether these Grants of the King were good or no, nor yet to whom the right of these Tithes belonged. And if we grant to Mr. *S.* all he desires, yet the special Priviledge of the King, is no proof of any Common right in the Subjects; nor are Tithes of vast Forrests ever limited to any Parish, a fit parallel for Parochial Tithes, which after all his pretences do still appear so anciently and firmly setled, that the Laity could never arbitrarily dispose of them, and so we dismiss this tedious Chapter.

CHAP. XII.

Of Appropriations.

§. 1. IN the next place Mr. *S.* makes a like unfortunate attempt to prove, that Lay Patrons did arbitrarily Appropriate whole Churches and Tithes to Monasteries. In the *Saxon* times, he saith, the Charters conveying them have usually nothing but *Ecclesias*, with some Land or Rent annexed (*a*). The reason whereof may be, either because only the Patronage was then conveyed, or rather, that Tithes and Churches were so constantly annexed in those times (before Bishops had consented to so many Grants of Tithes disposed from the Parish Church) that it was not necessary to name more than the Church, since no Tithes were then separated from it. But those Appropriations of *Bertulph*, *Beorred*, and *Edred*, *Saxon* Kings, which he cites out of *Ingulphus* (*b*), have the Subscription and Ratification of divers Bishops, yet extant in that Author, and so were made with Ecclesiastical con-

(*a*) Hist. *Tithes*, pag 370.

(*b*) *Ingulph.* hist. p. 490, 492, 498.

ſent (as all ſuch Donations in that Age were) and therefore they are no Arbitrary Lay Appropriations. Nor were there any ſuch after the Conqueſt, for that Covenant, generally uſed in all theſe Conveyances, *That the Incumbent of the Appropriate Church was to anſwer to the Monaſtery for Temporal Profits, and to the Biſhop for Spiritual Juriſdiction*, ſhews the Biſhops joyned in the Conveyance, and ſo took care to ſecure their own Juriſdiction. And when we might have expected ſome Charters of Arbitrary Lay Appropriations, Mr. *S.* here ſets down a Biſhops Confirmation of Appropriate Churches within Seventeen years after the Conqueſt; and the Hiſtorian ſaith, it was by the Kings expreſs order, and the Biſhop there grants them by the words of *Do & Concedo*. And if the Conqueror could do this by himſelf, why did he order the Biſhop to do it? If it be objected, The Priory of *Durham* was poſſeſſed of theſe Churches before: I anſwer, Whenever they were given in any time of the *Saxons*, the cuſtom ever was for the Biſhops to ſign the Grants. But let it be noted, that all the Churches given to Monaſteries in that Age were not conveyed to them *pleno jure*, ſo as the Monks could take the Profits *in uſus proprios*, and ſo they were not ſtrictly Appropriations; the Abby at firſt only had the Patronage, and ſo preſented a Clerk to the Biſhop, who anciently had all the Profits, till firſt the Monks charged their Churches with Penſions by the Biſhops connivance, and afterward got them wholly Appropriate to them by Biſhops Charters, reſerving only a Competent portion for the Vicar, which is uſually ſet down in the Inſtrument of Appropriation: but to make it plain, that no Lay-man could make a Church to be Appropriate, let us conſult the *Monaſticon*, where there are very many forms of Appropriations yet extant. One by *John* Biſhop of *Norwich* (conſecrated *An.* 1177) confirmed by *Hubert* the Archbiſhop (*d*). Another Appropriating the Church of *Gargrave* to *Sally*, by *William* Biſhop of *York*, *An.* 1121. Six Churches together are appropriate to *Taveſtoc* in one Charter, by *Bartholomew* Biſhop of *Exeter*, *An.* 1159 (*f*). Three

(*c*) *Hoveden*, part. 1. p. 263. An. 1083.

(*d*) Monaſt. *Angl.* Tom. 1. p. 638.
(*e*) Ibid. p. 842.
(*f*) Ibid. p. 998.

Three more Churches appropriate by the Archbiſhops of *York*, two of them by *Turſtan* (conſecrated *An.*1119.) (*g*) with many other Examples after the year 1200 (*h*). And the form of proceeding was this, Firſt the Patron uſually petitioned the Biſhop to appropriate the Church, as appears by a Charter of *Roger* Biſhop of *Worceſter* (conſecrated *An.* 1170) (*i*): Then the King alſo gave Licence to the Monks, —— *quantum in nobis eſt* (as his Charters ſpeak) (*k*), *that he who had power to unite and appropriate might do it* (*l*): And then the Biſhop made his Charter of *Appropriation*, and ſometimes the Popes confirmed it, and made the Monks pay well for it (*m*). And if the King himſelf gave the Church, they were firſt to reſign it to the Biſhops diſpoſal, and he gave it back by his Charter of *Appropriation* (*n*), only reſerving ſtill what portion of the Tithes or Profits he thought fit, for the Vicars maintenance (*o*); all which abundantly proves, that Biſhops only could appropriate Churches: Which yet may further appear from that Article of enquiry in the Viſitation of the Biſhop of *Lincoln*, *An.*1230, *Whether any Monks had appropriated Tithes or Churches to themſelves, without the Dioceſans Licence, or ſomewhat of that nature* (*p*). And a Synod at *Worceſter*, *An.* 1240, decrees, *That all Religious Perſons ſhall ſhew by what Title they poſſeſſed Tithes, contrary to the* Jus commune (*q*). And therefore the Monks of *Stanlaw* prove their Title to the Church of *Whally* by the Patron's Gift, the Dioceſan's Confirmation, and the Pope's Appropriation (*r*). *William* Archbiſhop of *York*, requires the Monks of *Shrewsbury* to prove their right to the Church of *Kirkham*, *by the donation of the Earl, and the confirmation of the Archbiſhop* (*s*); and the Abbot of S. *Maries York* is ſummoned to ſhew, *by what Title he receives Parochial Tithes againſt the tenor of the Jus commune*; and they producing the Popes Bulls, and the Archbiſhops old Charters, the preſent Archbiſhop confirmed them (*t*). A like ſummons there is from *Walter* Biſhop of *Coventry*, to all the Religious Houſes in his Dioceſs (*u*), and another from *Richard* Biſhop of *Worceſter* (*w*). Sometimes alſo the King ordered Inqueſt to be made, and

(*g*) Tom.2. p.103,104.
(*h*) Ib.pag.57, 208,433,&c.
(*i*) Ib.p.409.
(*k*) T.1.p.493, & T.2.p.319.
(*l*) T.1.p.493, & ibid.489.
(*m*) Tom.1. pag.858.
(*n*) T.2.p.665.
(*o*) Tom.1. pag.506, & Tom.2. 265, 656,&c.
(*p*) *Spelm.* Concil. Tom. 2. p.193.
(*q*) Ib.p.254.
(*r*) Monaſtic. Tom.1.p.902.
(*s*) Ib. p.380.
(*t*) An.1344. Tom.1.p.392.
(*u*) An.1319. ibid.p.1022.
(*w*) An. 1404. Tom.2.p.856.

and then the Monks were to prove their Churches were Canonically appropriated to them (*x*); and if their Evidences were burnt, they confirmed it by mens Oaths, who had ſeen the Biſhops Charters (*y*). Whence it is as clear as the Sun, that no Lay-man could ever make any *Appropriation*. And indeed, the Lay-granters do expreſs as much in their very Charters: *Rees*, a Prince of *Wales*, gives ſome Churches to *Tallach* Abby, *Quantum ad Dominum fundi pertinebat* (*z*). Nigellus de Munevil *gives all the Churches of his Demeſns, with their appurtenances, &c. to the Monks——as far as a Lay-man had right to give Eccleſiaſtical Profits*, Anſelm *the Archbiſhop giving his aſſent and Authority to the gift*, *An.* 1095 (*a*). *Euſtachius Fitz-John*, An. 1150. gives a Church to *Malton*, *As far as it was lawful for a Lay-man* (*b*); and the ſame phraſe is uſed by *Roger de Flamvil* in a like gift (*c*). *Richard de Heriet* gives *Somerford* Church to the Nuns of *Kington*, *As far as pertains to the Patron*, in the preſence of *Herbert* Biſhop of *Sarum*, *An.* 1196 (*d*). *William* Biſhop of *London*, *An.* 1219, confirms Churches to Monks, *which they had by the gift of* Geoffry de Mandevil *and his Heirs*, *as far as was in a Laymans power to give them* (*e*). Now, though all this be ſo plain, yet Mr. *S.* proceeds to ſearch for occaſions of Cavil.

(*x*) Ib. Tom. 2. p. 803.
(*y*) T. 1. p. 207. Tom. 2. p. 92.
(*z*) Monaſt. Tom. 1. p. 466.
(*a*) Ib. p. 560.
(*b*) T. 2 p. 816.
(*c*) Ib. p. 818, 819.
(*d*) Ib. p 887.
(*e*) T. 1 p. 364.

§. II. And firſt he ſaith, that *in elder Appropriations the Church and Tithes paſſed from the Patron by his gift, as a freehold paſſeth by Deed and Livery: Neither was confirmation or aſſent of the Ordinary neceſſary, as of later time.* And this he proves by one Example only, of *Robert Dane*, who about King *Henry* the Seconds time, appropriated the Church of *Waldrene* to the Priory of *Lewes* in *Suſſex* (*f*). But I have given nigh an hundred Examples and evident Proofs, that the Ordinary's conſent was neceſſary, both before *Henry* the Second's time, in it, and after it; and this one Example of his, is neither ancient (being but about *An.* 1160) nor is it any *Appropriation* at all; for *Robert de Dene* only gives the Patronage of *Waldrene* Church to the Prior of *Lewes*,

(*f*) Hiſt. *Tithes*, p. 373.

Lewes, with a Penſion of Six ſhillings eight pence out of the whole Profits, to be paid by the Incumbent, whom he obliged to live ſingle, or to forfeit the place, and the Prior to preſent another; but then let it be conſidered, the Biſhop muſt inſtitute this Parſon of *Waldrene*, and ſo conſent to theſe Covenants, or elſe they were not good in Law; and though Mr. *S.* have not produced the Biſhops Charter, yet the practice of the time makes it probable there was one; however, being only a conveyance of the Patronage, and a very ſmall Penſion, it is impertinently brought for an inſtance of an *Appropriation*. He adds, *Very many are extant, ſo made as well by Common Perſons, as Kings in the* Saxons *time and ſince, without Confirmations* (*g*). I anſwer, If many were ſo made, it is wonder he could not produce one; and for the *Saxon* Times I never ſaw one, but it was ſubſcribed, ſigned, and ratified by the Biſhops; and afterwards, when the Biſhops by ſpecial Charters did appropriate Churches, there are innumerable of them extant, and if ſome be loſt, it is no ſtrange thing, conſidering many Lay-grants are loſt alſo, for in ſome Foundations all the Lay-Charters are loſt, and only the Biſhops Confirmations remaining (*h*); yet as I will not be ſo vain as to argue, there never were any Lay-grants, becauſe none are now extant: ſo Mr. *S.* muſt not ſay, there were no Biſhops Confirmations, becauſe none now are to be found. He tells us, *The King and Superiour Lords confirmed ordinary Lay-mens Grants, and ſome ſay, the King did it as Supream Ordinary*. I anſwer, That the Kings and Superior Lords Confirmations are generally directed to the Biſhop, and many Biſhops Charters were made to confirm theſe Confirmations, by the Kings and Superior Lords ſpecial requeſt; yea the King himſelf did not give Tithes and Churches, but by the conſent of Biſhops. King *Henry* the Firſt, in his Charter to *Tewkſbury*, *An.* 1106. ſaith, *All theſe Gifts my Barons confirmed with me* (naming) Girard *Archbiſhop of* York *and four Biſhops more* (*i*). His Charter to *Eynſham* was made, *by the aſſent and counſel of his Biſhops and Barons* (*k*). His grant of

(*g*) Ib. p. 374.

(*h*) Mon. *Angl.* Tom. 1. p. 476. 404, 420, 442, & Tom. 2. 432, 433, &c.

(*i*) Monaſt. T. 1. p. 162.

(*k*) An. 1109. ibid. p. 265.

and then the Monks were to prove their Churches were Canonically appropriated to them (*x*); and if their Evidences were burnt, they confirmed it by mens Oaths, who had ſeen the Biſhops Charters (*y*). Whence it is as clear as the Sun, that no Lay-man could ever make any *Appropriation*. And indeed, the Lay-granters do expreſs as much in their very Charters: *Rees*, a Prince of *Wales*, gives ſome Churches to *Tallach* Abby, *Quantum ad Dominum fundi pertinebat* (*z*). Nigellus de Munevil *gives all the Churches of his Demeſns, with their appurtenances, &c. to the Monks——as far as a Lay-man had right to give Eccleſiaſtical Profits*, Anſelm *the Archbiſhop giving his aſſent and Authority to the gift*, *An.* 1095 (*a*). *Euſtachius Fitz-John*, An. 1150. gives a Church to *Malton*, *As far as it was lawful for a Lay-man* (*b*); and the ſame phraſe is uſed by *Roger de Flamvil* in a like gift (*c*). *Richard de Heriet* gives *Somerford* Church to the Nuns of *Kington*, *As far as pertains to the Patron*, in the preſence of *Herbert* Biſhop of *Sarum*, *An.* 1196 (*d*). *William* Biſhop of *London*, *An.* 1219, confirms Churches to Monks, *which they had by the gift of* Geoffry de Mandevil *and his Heirs, as far as was in a Laymans power to give them* (*e*). Now, though all this be ſo plain, yet Mr. *S.* proceeds to ſearch for occaſions of Cavil.

(*x*) Ib. Tom. 2. p. 803.
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(*z*) Monaſt. Tom. 1. p. 466.
(*a*) Ib. p. 560.
(*b*) T. 2 p. 816.
(*c*) Ib. p. 818, 819.
(*d*) Ib. p 887.
(*e*) T. 1. p. 364.

§. II. And firſt he ſaith, that *in elder Appropriations the Church and Tithes paſſed from the Patron by his gift, as a freehold paſſeth by Deed and Livery: Neither was confirmation or aſſent of the Ordinary neceſſary, as of later time.* And this he proves by one Example only, of *Robert Dane*, who about King *Henry* the Seconds time, appropriated the Church of *Waldrene* to the Priory of *Lewes* in *Suſſex* (*f*). But I have given nigh an hundred Examples and evident Proofs, that the Ordinary's conſent was neceſſary, both before *Henry* the Second's time, in it, and after it; and this one Example of his, is neither ancient (being but about *An.* 1160) nor is it any *Appropriation* at all; for *Robert de Dene* only gives the Patronage of *Waldrene* Church to the Prior of *Lewes*,

(*f*) Hiſt. *Tithes*, p. 373.

Lewes, with a Penſion of Six ſhillings eight pence out of the whole Profits, to be paid by the Incumbent, whom he obliged to live ſingle, or to forfeit the place, and the Prior to preſent another; but then let it be conſidered, the Biſhop muſt inſtitute this Parſon of *Waldrene*, and ſo conſent to theſe Covenants, or elſe they were not good in Law; and though Mr. *S.* have not produced the Biſhops Charter, yet the practice of the time makes it probable there was one; however, being only a conveyance of the Patronage, and a very ſmall Penſion, it is impertinently brought for an inſtance of an *Appropriation*. He adds, *Very many are extant, ſo made as well by Common Perſons, as Kings in the* Saxons *time and ſince, without Confirmations* (*g*). I anſwer, If many were ſo made, it is wonder he could not produce one; and for the *Saxon* Times I never ſaw one, but it was ſubſcribed, ſigned, and ratified by the Biſhops; and afterwards, when the Biſhops by ſpecial Charters did appropriate Churches, there are innumerable of them extant, and if ſome be loſt, it is no ſtrange thing, conſidering many Lay-grants are loſt alſo, for in ſome Foundations all the Lay-Charters are loſt, and only the Biſhops Confirmations remaining (*h*); yet as I will not be ſo vain as to argue, there never were any Lay-grants, becauſe none are now extant: ſo Mr. *S.* muſt not ſay, there were no Biſhops Confirmations, becauſe none now are to be found. He tells us, *The King and Superiour Lords confirmed ordinary Lay-mens Grants, and ſome ſay, the King did it as Supream Ordinary*. I anſwer, That the Kings and Superior Lords Confirmations are generally directed to the Biſhop, and many Biſhops Charters were made to confirm theſe Confirmations, by the Kings and Superior Lords ſpecial requeſt; yea the King himſelf did not give Tithes and Churches, but by the conſent of Biſhops. King *Henry* the Firſt, in his Charter to *Tewkſbury*, *An.* 1106. ſaith, *All theſe Gifts my Barons confirmed with me* (naming) Girard *Archbiſhop of* York *and four Biſhops more* (*i*). His Charter to *Eynſham* was made, *by the aſſent and counſel of his Biſhops and Barons* (*k*). His grant of

(*g*) Ib. p. 374.

(*h*) Mon. *Angl.* Tom. 1. p. 476. 404, 420, 442, & Tom. 2. 432, 433, &c.

(*i*) Monaſt. T. 1. p. 162.

(*k*) An. 1109. ibid. p. 265.

of Tithes to *Cirenceſter* was, *by the conſent and authority of Pope* Innocent, *and by the counſel and approbation of his Archbiſhops and Biſhops* (*l*). King *Henry* the Second, gives Tithes to *Dodford* by the advice and at the requeſt of *Baldwin* the Archbiſhop (*m*); and of this we might bring many more Examples. And ſince he confeſſes, there were two Councils in the time of *Henry* the Firſt, both confirmed by that King, to prohibit Lay-men from giving Churches to Monks without the Biſhops aſſent (both cited before) (*n*). We may conclude, no ſuch Lay Appropriations were then made, the Chartularies of *Rocheſter* have one clear Example of the uſe of that time, *viz.* about *An.* 1140; for it is recorded, *That* Alice de Elſings *requeſted* Theobald *the Archbiſhop, to grant the Church of* Elſings, *built upon her Land to the Priory of* Leeds, *for ſhe* (*as far as in her lay*) *had given the Temporalities of it to them for ever.* And Mr. *S.* (for all his brags) hath not one Example of the contrary, but flies to remote Conjectures about other matters; for the Preamble of *Alexanders* Decretal (*o*) concerns not *Appropriations*, only it condemns a wicked and enormous Cuſtom of inveſting Clerks with Churches without Inſtitution from the Biſhop; but the Decree doth excommunicate the Receiver, and all the other Decretals here cited declare the Donation to be void (*p*). I will not enter into the diſpute about *Inveſtitures*, but keeping cloſe to the buſineſs of *Appropriations* of Pariſh Churches to Monaſteries, ſhall note, that Mr. *S.* offers but one Example of a Parſon that was Inſtituted by a Lay-man, *Legitimè inſtitutus à* W. *Nobili viro* (*q*); and this is ſo notorious a forgery that he may well be aſhamed of it; for the Decretal he cites hath no ſuch matter in it, ſpeaking only of *a Parſon* E. *who* (as the Biſhop of *Exeters* Letter informed the Pope) *was legally inſtituted by* R. *his Predeceſſor of happy memory* (*r*), that is, by *Robert* Biſhop of *Exeter*; and this *W.* the Noble man, would have put this *E.* out of the Living, though he had been ſo inſtituted, upon pretence that *E.* had reſigned it to his Lords Chaplain, now deceaſed, and ſo the Church (as *W.* the Noble man and Patron pretended) was

(*l*) An. 1133. Tom. 2. p. 89.
(*m*) Ib. p. 307.
(*n*) Ch. xi. §. 1. in fine.
(*o*) Append. ad Concil. *Later.* par. 28. c. 11. ap. *Bin.* Tom. 3. p. 2. pag. 620.
(*p*) Decret. l. 3. tit. 38. cap. 10. pag. 1443. item cap. 11, & 21.
(*q*) Hiſt. *Tithes*, pag. 378.
(*r*) Append. ad Concil. *Lat.* par. 8. c. 14. *Bin.* Tom 3. par. 2. p. 589.

was void, and he would have presented another. So that this shews the use of Institutions as early as *Robert* of *Exeters* time, *An.* 1150. and manifests how bad a Cause Mr. *S.* manages, since it needs these base supports of manifest false quotation.

§. III. The Grant of Rents and Pensions out of Rectories by Patrons, would shew somewhat of arbitrary disposal of part of the Church Revenues, if it could be proved to be done without the Bishops consent. But the Grant of six Marks *per Annum* to S. *Noete* out of the Church of *Wimbish*, by *Robert Fitz-Walter* in King *Johns* time (*s*), plainly supposes the Bishops consent, because the Charter saith, *Whatever Parson upon his or his Heirs Presentation, shall be instituted to* Wimbish, *he shall give security to the Monks for this payment.* Wherefore, since the Bishop was to take security at his Institution, we may be sure he allowed of the Pension. And the Chartularies of *Rochester* will more fully explain this, where *Gilbert de Glanvil* (about *An.* 1200) *grants to the Priory of* Leeds, *by the will and consent of* Roger de Mereworth, *Patron, and* Martin, *Parson of* Mereworth, *Forty shillings in the name of a perpetual Benefice, to be received from the said* Martin *while he lived, and afterward from his Successors* ——*and the said* M. *sware, to make this payment in the Bishops presence.* So that we see these Grants were made before the Bishop, and he confirmed them; yea, and the Incumbents consent was necessary also, for in the same Records, *William Parson of* Frendesbury *consents to make* Strodes *(formerly one of his Chappels) to be a Parish Church.* And the *Monasticon* hath many full instances of the Incumbents consent to all Grants concerning the Tithes of his Church. *Maud*, Countess of *Warwic*, gives *Tadcaster* to the Monks of *Sally*, *Nicholas Parson of that Church being present, and consenting* (*t*). *And the Patron undertakes to satisfie the Parson of* Saltry, *when he gives that Church to the Abby* (*u*). The Parson also did consent (*w*), and if not, the Patron and Bishop both in their Grants are forced to save and except to them their

(*s*) Hist. *Tithes*, p 378.

(*t*) Monastic. Tom. 1. p. 843.

(*u*) Ib. p. 850.

(*w*) Ib Tom. 2. pag. 80.

(x) T. 1. p. 638. Tom. 2. p. 97. pag. 409.

poſſeſſion during their life (x); yea Mr. *S.* confeſſeth at laſt, *pag* 381. *That the aſſent of the Patron and Biſhop was ſometimes had*, and he proves it by a full inſtance, *An.* 1196. and though he ſay, he never met with an inſtance wherein the Incumbent was Grantor, yet the Regiſter of *Rocheſter* hath two Charters; the firſt of which, made by *Gilbert* Parſon of *Sutton*, declares, "That the Biſhop of *Rocheſter*, "by his conſent and will, had made a Grant of Tithes "out of new Tillage in his Pariſh, to the Monks of *Ro-* "*cheſter*, and to confirm it as far as concerned him and his "Church of *Sutton* he ſeals this Grant, *An.* 1192. And in another Charter, "*Thomas* Parſon of *Kocleſtan*, grants "to the Hoſpital at *Strodes*, Ten ſhillings out of his Church "yearly, aſſigned to the ſaid Hoſpital by *Gilbert* Biſhop of "*Rocheſter*; and that this may be firm for ever, the ſaid "Parſon ſets his Seal to it. Where we ſee both Biſhops and Incumbents joyned in the Grant of Rents and Penſions out of Rectories, and ſo it was no arbitrary Act of the Patron. As for the Fine he cites (y), *An.* 1184, it ſeems the Church of *Budeketun* was made void at that time when the Patronage was in diſpute, and therefore no Incumbent is named; but ſince the Prior of *Lewes* quits his whole claim for a Penſion of 4 *s. per An.* we may reaſonably believe it was only an old Penſion renewed, or elſe the Prior would ſcarce have taken ſo ſmall a compenſation for his claim. However, it is ſure the Patron and Prior both were ſure of the Biſhops conſent, becauſe they agree the Parſon, *Qui in eadem Eccleſiâ, per ipſum* R. (the Patron) *aut haredes ſuos inſtituetur, poſt inſtitutionem ſuam coram Epiſcopo fidelitatem præſtabit, &c.* that he will pay the aforeſaid Four ſhillings. Nor need we be ſtartled at the word *Inſtituted*, which is here uſed for the Patrons preſenting, ſince the Incumbent was to go to the Biſhop for admittance after ſuch preſentation by the Patron, and then he was to give ſecurity to the Biſhop for this payment, becauſe indeed the Grant had been void, if not made with his conſent. The like may be ſaid to his other inſtance of the Church of *Kirkham* (z), *An.* 1196. ſince there alſo the Incumbent was to give Se-

(y) Hiſt. *Tithes*, pag. 379.

(z) Hiſt. *Tithes*, p. 381.

curity

curity before the Biſhop for true payment of the Penſion. And indeed Mr. *S.* begins now to abate of his confidence, and (after a confeſſion, that the Parſon and Biſhops aſſent was ſometimes had) he only ſays now, *It may be ſtrongly conjectured, it was not thought altogether neceſſary*; but our expreſs Proofs ſhew it was neceſſary: to which we may add, *The Confirmation of* Benedict *Biſhop of* Rocheſter (*An.* 1214) *of a Penſion of Forty ſhillings* per An. *out of the Church of* Chealks, *to the Monks of* Norwich. And another of Five pound *per An.* to the ſame Monks from the ſame Church, *Confirmed by* Richard *Biſhop of* Rocheſter, *An.* 1260. Both extant in thoſe Chartulary Penſions, therefore were then confirmed by Biſhops: And for the Biſhops uſe of Inſtituting, he grants *pag.* 382. *They moſt uſually Inſtituted alſo where Lay-men were Patrons, after* Anſelm's *time* (*An.* 1114); And this he proves by *Turſtan* Archbiſhop of *Yorks* granting power to the Archdeacon of *Richmund* to Inſtitute (*An.* 1120) (*a*); and by two Decretals, one of which orders *the Incumbent at his Inſtitution by the Biſhop, to ſwear he will pay the Canonical Penſions* (*b*). The other Decretal *gives the Biſhop power to refuſe him that is preſented, if he judge him unfit* (*c*). And both a Chief Juſtice *Glanvil*, and a Learned Church-man, are here by Mr. *S.* brought in for evidence, of the Biſhops uſual Inſtituting in the time of *Henry* the Second, which utterly confutes his falſe Aſſertion, *That Lay Patrons did arbitrarily fill their Churches*; for they could not do it without the Biſhop liked their Clerk, and ratified the Preſentation by his Inſtitution. As for the ſcruple he raiſes about the Archdeacons Inſtituting, and not the Biſhop (*d*), it is well known that the Archdeacon is *Oculus Epiſcopi*, and but his Vicar in this Act (*e*); and in the vacancy he may ſuſpend (*f*), receive Reſignations (*g*), or excommunicate Intruders (*h*); but they are forbid to do theſe things *Propriâ Autoritate* (*i*). And for Mr. *S.* his Inſtance of a Writ directed to the Archdeacon for filling of a Church in *Lincoln* Dioceſs, *An.* 1207 or 1208, it is certain there was no Biſhop of *Lincoln* at that time, for *William* of *Blois* died *An.* 1206, and *Hugo Wallis* was not

(*a*) Decret. l. 3. tit. 8. cap. 6. p. 1163.
(*b*) Ib. l. 2. tit. 24. c. 11. p. 874.
(*c*) Ib. l. 3. tit. 38. c. 24. pag. 1452.
(*d*) Hiſt. *Tithes*, p. 383.
(*e*) *Fulberti* Ep. 34. *Sarisb.* ep. 1. pag. 499.
(*f*) Idem Ep. 3.
(*g*) Id. Ep. 5. & *Ivo* Ep. 1.
(*h*) *Ivo* Epiſt. 131.
(*i*) Append. ad Concil. *Later.* par. 24. cap. 2. *Bin.* T. 3. par. 2. p. 614.

Conſecrated till *An.*1209 (*k*); in this Vacancy therefore the Writ muſt needs be directed to the Archdeacon. And for the Inſtitutions he ſpeaks of *pag.* 385. by the Archdeacon of *Leiceſter*, *An.*1221. they were either by Commiſſion from the Biſhop, or elſe during the time that *Hugh de Wallis* was excommunicated by the Pope (*l*), for *Lincoln* was not vacant then. And for Induction, we are ſure it hath been given by the Archdeacon ever ſince the time of Pope *Adrian*, *An.*1156 (*m*), and *Johannes Sariſburienſis* (*n*): ſo that after all this duſt raiſed, our great Antiquary can find nothing yet, to diſprove the Biſhops conſent to all fair diſpoſitions of Church Revenues.

(*k*) *Godwin.* de Vit. præſul. pag. 347.

(*l*) Ib. p. 347.

(*m*) Decret. l. 3. Tit. 8. c. 6. p. 1163.

(*n*) *Sariſb.* Ep. 1.

§. IV. Another Argument of Patrons diſpoſing Churches without the Biſhops conſent, Mr. *S.* takes from two Canons, forbidding *the Sons of Prieſts to inherit their Fathers Benefices* (*o*), *or to claim them by ſucceſſion*, *or for any Incumbent to appoint his own Succeſſor* (*p*); which he ſuppoſes could not be done, if the Biſhop had then Inſtituted upon preſentation, as is now uſual. But I reply, The very Biſhops ſometimes conſented to ſuch Succeſſion, which occaſioned that Canon in a *London* Council to forbid them to conſent to it (*q*); yet above four year after the firſt Canon, the Pope by a Decretal to *Anſelm*, allows him *to admit the Sons of Prieſts into Churches*, *ſince the moſt and beſt of the* Engliſh *Clergy then were ſuch* (*r*). But ſeveral of Mr. *S.* his Quotations here out of the Canon Law, do ſhew that the Biſhops did inſtitute Prieſts Sons into their Fathers Benefices (*s*). His third Quotation ſpeaks of a Prieſt, the Son of a former Incumbent, who had Canonically got the Living, and enjoyed it Thirty year, about *An.* 1150 (*t*). The fourth is the ſame Caſe, ſaying more plainly, *That he who poſſeſſed the Church of* C. Jure hæreditario, *did Canonically obtain it*, *i. e.* by the Biſhops Inſtitution (*u*). The Eighth Quotation ſhews, that Incumbents of Livings belonging to Abbies, promiſed Penſions to the Monks on condition they woul preſent their Sons after their deceaſe (*w*); which implies, the Biſhops would allow ſuch Succeſſions.

(*o*) An. 1103. *Spelm.* Concil. Tom. 2. p. 24.

(*p*) An. 1125. p. 34.

(*q*) An. 1237. Ib. p. 226.

(*r*) An. 1107. Ib. p. 29.

(*s*) Hiſt. *Tithes*, pag. 386.

(*t*) Decret. l. 2. Tit. 20. cap. 7. pag. 766.

(*u*) Append. ad Concil. *Later.* par. 8. cap. 22. *Bin.* T. 3. par. 2. pag. 590.

(*w*) Ib. par. 28. cap. 8. p. 620.

ceſſions till the Pope here forbid it. The laſt Quotation directs the Biſhop, in what caſe he may admit Sons (*x*). Theſe therefore do expreſly ſhew, that Prieſts Sons did often ſucceed their Fathers by the Inſtitution of Biſhops, and therefore ſuch ſucceeding in Benefices is no good Argument, that the Biſhops did not Inſtitute in thoſe days, or that Patrons without their conſent could diſpoſe of their Church Livings. His Second and Seventh Quotations, *forbid Biſhops to admit ſuch Incumbents as Patrons nominated, on condition of others to ſucceed them* (*y*), and his Sixth Quotation expreſly mentions *the Patrons preſenting to the Biſhop* (*z*): yet theſe Mr. *S.* brings in (hoping they would never be examined) to prove Patrons giving Livings to Prieſts Sons without the Biſhops conſent, which is flatly contradicted by Seven of his Nine places brought to prove it, and the other Two places neither affirm nor deny the Biſhops conſent. As for the Verdict, *An.* 1195, of a Prieſt that gave a Living to his Son, according to the Cuſtom of *Cambridge* then, let it be noted this Prieſt was both Patron and Incumbent, and ſo might well be ſaid to give his Son the Living, if he gave him only a Preſentation to it, to intitle him to the Biſhops Inſtitution; and thoſe words, *According to the Cuſtom of* Cambridge *then*, are put in, becauſe of old, Prieſts Sons there might have ſucceeded their Fathers, though now when this Verdict was given, ſuch Succeſſion was not allowed. But ſuppoſe Mr. *S.* could find ſome few irregular Patrons and Prieſts, who in contempt of the Biſhops ancient right, and the Laws did diſpoſe of their Livings without his conſent; yet we ſee this courſe was illegal, and the more uſual cuſtom was in all times to get the Biſhops conſent.

(*x*) Ib. par. 49. c. 14. pag. 640.

(*y*) Decret. l. 1. tit. 35. cap. 5. pag. 484.

(*z*) Append. ad Concil. *Latr.* par. 19. cap. 1. *Bin.* p. 609.

§. V. We have proved, that Biſhops alone admitted all Clerks to Churches in the firſt Ages, and when Patrons were allowed to nominate, ſtill the Biſhop was to approve, *Chap.* VI. §. 3. and we have ſhewed, that Biſhops did Inſtitute here long before the year 1200; ſo that we do not

not thank Mr. *S.* at all for granting, *That after this time, neither Kings nor other Patrons filled their Churches otherwise, than by Preſentation to the Biſhop* (*a*); for we may be ſure Biſhops Inſtituting was long uſed here, before the Law of Lapſe (which is grounded on it) was made: yet he truly cites *Hoveden* to ſhew this Law was made in *Alexander's Lateran* Council, *An.* 1179 (*b*); and he might have found in the ſame Author, that the Dean of *York* did plead this very Law of the *Lateran* Council, for his refuſing an Archdeacon of the Weſt-riding, preſented by the Archbiſhop after the Six Months was expired, *An.* 1195 (*c*); and therefore we need not wonder it was alledged here in Courts of Juſtice very anciently, and become *Conſuetudo regni Angliæ* (*d*), when it had continued above an hundred years. But Mr. *S.* wanting better Arguments, falls to criticize upon the old form of the Writ of *Quare Impedit*, hoping to ſqueeze ſomewhat out of it to prove, that Lay Patrons anciently inveſted Clerks into Pariſh Churches without the Biſhop: but I think this Writ will prove the contrary, for firſt, this Writ could not be older than the Biſhops power of refuſing Inſtitution to Incumbents, and the form is, to order the Biſhop, *That he juſtly, &c. permit the Patron to preſent a fit Perſon to ſuch a vacant Church belonging to his donation.* Here the word [*Permit*] declares it muſt be done by the Biſhops leave, and he alſo is Judge whether the Parſon be fit or no. The word [*Donation*] implies no more than giving a Title, and [*Præſentare*] ſignifies no more than to Preſent a Clerk to the Biſhop, no not in the Decretals he cites, where *Repreſentare* is alſo uſed in the ſame ſenſe (*e*), as any man may ſee who will examine the places: And to ſay, that [*Præſentare*] is taken for conſtituting a Prieſt in that ſenſe that *Timothy* and *Titus* did [χειροτονεῖν] *Ordain Elders in every City*, *Titus* I. *ver.* 5. (as Mr. *S.* very abſurdly affirms) is to make Lay Patrons Biſhops, and give them power of Ordination. And if he that only hath the bare nomination of a Clerk, be ſaid [*Præſentare*;] then ſurely to Preſent cannot ſignifie *Inveſting*, or *Compleat putting into poſſeſſion*; for

(*a*) Hiſt. Tithes, p. 387.

(*b*) Hoveden pars poſter. p. 336.

(*c*) Ib. p. 430. *b.*

(*d*) An. 1281. Hiſt. Tithes, pag. 390.

(*e*) Decret. l. 3. tit. 39. cap. 11. p. 1467. Et ib. Tit. 5. cap. 31. p. 1150. Et l. 5. Tit. 33. cap. 3. pag. 1962.

for Mr. *S.* ſaith, *pag.* 86. *The Patrons at this day have no more power but of Nomination, which gives no intereſt or poſſeſſion.* And yet Patrons have now as much power as they had of old, for Mr. *S.* confeſſeth here (*f*), that ὀνομάζειν is the oldeſt word uſed in this matter, even in *Juſtinian*'s Law, which he here cites; by which it is plain, that of old Patrons had no power but of bare Nomination, and if they have exerciſed any more ſince, it hath been by Uſurpation. But the ſtrangeſt thing of all is, that Mr. *S.* ſhould cite *Cicero*'s Epiſtles to prove, that *Nominatio* ſignifies, *to inveſt with an Office*: When *Brutus* there, upon the Vacancy of the Conſulſhip, deſires *Cicero* (who, as being Augur, was to name the Candidates for vacant Offices) to name *Bibulus*, *Neque enim* (ſaith he) *digniorem nominare potes quam Bibulum* (*g*); but though the Augur named the Candidates, the People *in Comitiis* choſe whom they pleaſed; and it was not the Augur's naming (no more than it is the Patrons preſenting) that put them into the Office, but the Peoples approbation; and though 'tis like *Cicero* did name *Bibulus*, yet Hiſtory ſhews he did not get the place: ſo that *Nominatio* doth not at all ſignifie to inveſt into an Office, in *Cicero*, nor had the Patrons ever any ſuch Power legally veſted in them. All which ſtrongly proves, that the Church Profits were always, and ought to be diſpoſed by the Biſhops conſent.

(*f*) Hiſt. Tithes, pag. 353.

(*g*) Review, p. 471.

CHAP.

CHAP. XIII.

Of Infeodations and Exemptions.

§. I. BY all the foregoing Confutations of Arbitrary Conſecrations and Appropriations, it may appear that the Conveying Tithes into Lay-hands at the Diſſolution of Abbies, was not grounded upon any Ancient practice, but was an unprecedented Act; and Mr. *S.* himſelf thinks, *the Tithes ſo conveyed can ſcarce be enjoyed with a ſafe Conſcience* (*g*). Nor was there any Law of this Kingdom in *Henry* the Fifths's time, to enable him to have made *Infeodations* to the Laity of Prior Aliens Tithes given him by Act of Parliament, wherefore that Prince juſtly diſpoſed of them to other *Eccleſiaſtics*, which pattern if King *Henry* the Eighth had followed, his proceedings had been far more juſtifiable. As for *Infeodations*, before the diſſolution Mr. *S.* grants there is no certain Teſtimony of them in *England*, and the Proofs he brings are, at beſt, but remote Conjectures. Thoſe Tithes which *Odo*, Biſhop of *Bayeux* and Earl of *Kent*, confirms, viz. *Decimas quas fideles ejus habebant*. Hiſt. *Tithes*, Chap. xi. pag. 1. ſeem to be no more but the Tithes of their Land, which they deſired to give to the Monks of S. *Auguſtines*: and *pag.* 331. The Tithes given to *Robert Saint-John* by his elder Brother *William*, and by the ſaid *Robert* given to *Boxgrave*, were no Parochial Tithes, but *Decimas gabulorum*, the Tenth part of his Tolls, or his Rents in Mony. The Tithe of *Nicholas de Stodcham* was enjoyed by a Clergy Man (Curate of the place it is like) till he gave (and his Lord *d'Oily* confirmed) it to *Oſney*, by the advice and conſent of the Biſhop of the Dioceſs (as we proved before:) And if the ſtory be true of *Roger d'Oily*'s giving his Tithes yearly ſometimes to one Servant, and ſometimes to another

(*g*) Review, pag. 471.

ther, it is no example of an Infeodation, but an illegal, impious and wild Sacriledge; but Mr. *S.* gives little credit to this Author, *pag.*401. As for *Hern* and *Pigot*'s case, he himself tells us, *pag.*407. *That continual consideration was given to the Church for the Tithes enjoyed by this Lay-man*; so that this was a Composition or Tenancy, rather than an Infeodation. Wherefore there were anciently no Infeodations in *England*, nor would they be allowed (saith Mr. *S.*) at this day, unless they could derive them from the Grant of the Patron, Parson, and Ordinary; that is, unless they came from the Church, as we have fully proved they did in other Countries, *Chap.*VI. §.4. and not only the Author of the Book of *Osney*, but *Lindwood* also is cited by Mr. *S.* to prove the truth of that Opinion *(h)*; and if there were *Infeodations* here granted first from the Church, though the Grantors were faulty, yet still all Church Revenues were disposed by the Church. The phrase in *Domus-Dei* Book, that such a Lay-man *tenet Ecclesiam*, and sold it to such an one, is only meant of the Patronage, which also was forbid to be sold a little after *(i)*; and the phrase of *Decimas aut Ecclesiam*, is to denote the Profits and the Patronage *(k)*. The Kings having a share in the Oblations at the Church of *Mosely*, reaches not the matter of Tithes: so that neither his Examples nor his Arguments do shew there were any Infeodations in *England*.

(*h*) Tit. *De locato & conducto, c. licet bona*, verb. *Portiones.*

(*i*) Append. ad Concil. *Later.* cap. 15, 16, 17. *Bin.* Tom. 3. par. 2. pag. 603.

(*k*) Ib. c. 18.

§. II. Since all *Exemptions* come originally from the Church, and are granted to such as were reckoned of old among the Clergy, though the Pope did ill to grant them, yet it no way makes for Mr. *S.* his Opinion of Laymens arbitrary retaining or disposing Tithes, so that we need say nothing concerning them: Only, since these Exemptions from Tithes are grounded upon an unjust exercise of Papal power, and that also to such as were accounted of the Clergy, surely they are but a slender security to a Lay Protestants Conscience, who rejects the Popes Authority, and yet by virtue of that Authority

retains what is due to the Parish Minister by the Law of God, with which no Earthly power can dispense. Mr. *S.* tells us, The Parliament it self thought them so unjust, *An.* 1399, that by a Statute 4 *Hen.*4. c.4. whoever procured any Bull for such Exemptions should be liable to a *Præmunire* (*l*). Nor do our present Laws allow any Prescription (saith Mr. *S.*) *De non Decimando*, unless where the Prescription began in a Church-man; and yet if it continue not still in the hands of a Church-man, the reason for which it began is ceased, and therefore (one would think) the priviledge *De non Decimando* should cease also. But our Laws do allow Compositions and Prescriptions of a *Modus Decimandi*, though made at first by the power and policy of the Laity, and confirmed by the negligence or corruption of the Clergy, and though the quantity paid be never so disproportionable to the original and just due: yet they who can claim such a priviledge, ought to consider, whether the allowance of Secular Laws be a sufficient Rule for conscientious Christians to walk by in all cases; and whether Custom can make an ill thing become good, as also, whether any Incumbents ill bargains (who have but Estates for life) ought to be stood upon to the prejudice of their Successors; especially where these Compositions have made some Livings so small, that they have not left the Minister that competency, which all Men grant to be due by the Law of Nature as well as by the Law of Christ. If private gain did not pervert mens Judgments, they could not but discern they are obliged in Conscience to make some compensation at least for this injury, though Custom and humane Laws secure them from being compellable thereunto.

(*l*) Hist. Tithes, p. 407.

See Mr. his Review, pag. 476, 477.

CHAP.

CHAP. XIV.

Of the Juriſdiction of Tithes.

§. I. THE matter of this Chapter doth ſo properly belong to Mr. *S.* his Profeſſion, that I ſhall not contend with him therein, nor is it much material in what Courts the right of Tithes be determined, provided ſuch as are injured may find due remedy: Yet Mr. *S.* grants, *That regularly the Juriſdiction of them, both here and in all other States of Chriſtendom, belongs to the Spiritual Court* (*m*). And though this Court was anciently here the ſame with the *Shire-mot*, or *County Court*, yet we may gather from the *Capitulars* (whence many of our *Saxon* Laws are taken) that the Biſhop only judged of theſe matters, and the Sheriff was there only to diſtrain and force obedience to the Biſhops Sentence (*n*), which is the meaning of that paſſage in the Confeſſors Law —— *he ſhall be compelled to reſtore his Tithe by the Juſtice of the Biſhop, and if need be of the King alſo* (*o*); for which cauſe, when *William* the Conqueror ſeparated theſe Courts by that Charter cited by Mr. *S.* here *pag.* 413. he left the Trial of Tithes ſolely to the Biſhop.

(*m*) Hiſt. *Tithes*, pag. 411.

(*n*) Leg. *Longob.* Tit. 3. c. 7. Capit. Addit. 4. cap. 37. Conc. *Mogunt.* ſub *Raban.* c. 7.

(*o*) Hiſt. *Tithes*, Ch. viii. §. 13.

§. II. Nor is there any reaſon to Mr. *S.* for ſay, *There is little proof that the Spiritual Court had then the Juriſdiction of Tithes* (*p*); for he brings divers Proofs himſelf, *viz.* of the Monks of *Northampton* recovering two parts of the Tithe of *Wollaveſton* before *Robert* Biſhop of *Lincoln*, *An.* 1150; and the Epiſtle of *Johannes Sariſburienſis*, *An.* 1140, mention very many Suits for Tithes in the Biſhops Courts, not only in his own time, but had and determined there long before (*q*). To which may be added out of the Chartularies of *Rocheſter*, that *William*, *Archbiſhop of* Canterbury, *confirms*

(*p*) Hiſt. *Tithes*, pag. 414.

(*q*) *Sariſb.* Ep. 11, & 21, 84. 92, 109, 133, &c.

confirms the Tithes of Modingham *to the Monks of* Rocheſter, *for which they were ſued before him by the Parſon of* Eltham, *but he by advice of Council had adjudged them to the Monks.* Archbiſhop *Theobald*, about the year 1140, confirms the Tithes of *Summerfield* to the Priory of *Leeds*, which they had recovered before him in a Synod at *Canterbury*. *Richard*, the Archbiſhop alſo, *An.* 1177, confirms the Portion of *Geddings*, recovered in a Suit before him; with many other inſtances, which we will paſs by, ſince Mr. *S.* confeſſeth, *That the old Common Lawyers*, Fleta *and* Bracton, (*in* Henry *the Third's time*) *declare, That the Juriſdiction of Tithes belonged to theſe Courts* (*r*); only we note, that Mr. *S.* his Example cited out of the *Lateran* Council, to ſhew that this Court judged alſo of Arbitrary Conſecrations, is groſly miſtaken (*s*), for there is not one word of any Arbitrary Conſecration, only a Suit between Two Parſons for a Benefice twice granted by the Patroneſs, and confirmed to one of the Parſons by the Biſhop, and to the other by the Archdeacon (*t*); and of this the Spiritual Court judged in Pope *Adrian*'s time, *An.* 1155. But Mr. *S.* undertakes to prove, that Original Suits for Tithes were held in the Kings, as well as in the Biſhops Court, before King *Henry* the Seconds time (*u*): But his firſt inſtance of a Plea at *Fulcardimont* in *Normandy*, is no evidence of *Engliſh* Practice; and in the Conqueror's time, for ſome years the Kings Court and the Biſhops were all one. The Writ of *Henry* the Firſt to *Manaſſes Arſic*, is no more but a ſtrict Injunction to him to pay Tithes, and is no determination of right, but only (in purſuance of his own Law *) an order to puniſh him, if he would not do juſtice in this matter: So alſo is the ſame Kings Writ for payment of ſuch Tithes, as by cuſtom and good proof were due to the Church of *Beverley*. The Precept about the Tithes of *Pocklington* and *Driffield*, is only to confirm the Biſhop of *Carliſle*'s Grant (*w*), and by adding Secular Authority thereto, to take care it be duly executed. His next Inſtance is after the time above prefixed (*viz.* 6. of *Henry* the Second) yet the Sheriff is only ordered to enquire of matter

(*r*) Hiſt. *Tithes*, pag. 428.

(*s*) Hiſt. *Tithes*, pag. 415.

(*t*) Append. ad Concil. *Later.* par. 47. cap. 5. *Bin.* T. 3. p. 2. 636.

(*u*) Hiſt. *Tithes*, pag. 416.

* Hiſt. *Tithes*, Ch. 8. §. 17.

(*w*) Hiſt. *Tithes*, Ch. 11. p. 337.

matter of Fact, and thereupon to ſee right done: but none of the Inſtances expreſly mention any Suit for the right of Tithes in the Kings Courts, only where the right was tried elſewhere, or well known to many Witneſſes, the Kings Writs compel Offenders to pay their dues. *Sariſburienſis* indeed doth charge the King and his Lay Subjects with intermeddling in judging of Churches and Tithes (*x*); but he is wont to repreſent all things hard on the Kings ſide, and neither M. *Paris*, nor any other good Author, do reckon this among the Statutes of *Clarendon*, ſo that the truth of the Complaint may be doubted; and if theſe Suits for Tithes had been uſual, ſurely more Teſtimony would have remained concerning them.

(*x*) *Sariſbur.* Epiſt. 59.

§. III. Concerning the Antiquity or Equity of Prohibiting proceedings in the Biſhops Courts, where Tithes are demanded of things not ordinarily paid, I ſhall not now diſpute; only obſerve, that his firſt inſtance of ſuch a Prohibition is but *An.* 1124, and that it was complained of as a great injury, in a National Synod, very ſoon after, viz. *An.* 1237 (*y*). He tells us alſo, that (becauſe the Common Law uſeth to judge of Advowſions, and the rights of Patronage, ſince the year 1285. the Judges have ordered all Trials in the Spiritual Court to be ſtopt, where the fourth part of any Churches Tithes are claimed, upon pretence, *leſt the Patronage be damnified:* But he confeſſes, that neither *Lindwood* (*z*), nor *Robert Groſthead*, the famous Biſhop of *Lincoln* (*a*), nor the National Council of *London* (*b*), did think this a good reaſon for removing this Trial to the Common Law; becauſe ſince the Patron cannot juſtly claim any intereſt in the profits of his Church, therefore his Patronage is not impaired by adjudging ſome of the Profits (hitherto wrongfully enjoyed) to belong to another Church; which reaſon is clear enough to thoſe who are not made partial by prejudice. However, Mr. *S.* declares, that the Writ of *Indicavit*, only ſtops proceedings till the Common Law hath diſcuſſed what concerns the Advowſion, but the final Sentence is to be given by the

(*y*) Hiſt. *Tithes*, p. 422, 423.

(*z*) Conſtit. Provinc. tit. *De foro competent.* cap. *Circumſp.* verb. *Quarta pars.*

(*a*) Hiſt. *Tithes*, pag. 430.

(*b*) Ib. p. 429.

(c) Ib. p. 426. the Spiritual Judge (*c*): wherefore the right of Tithes is properly determined in the Spiritual Court, where the Suit is both begun and ended.

§. IV, V, VI. The Writs of *Scire facias* (to call men to anſwer for Tithes in the Chancery) being taken away by (d) Ib. p. 434. Statute Law, *An.* 1344 (*d*), in an Age when the Clergy rather loſt than gained ground; we may believe it was rather the injuſtice of the thing, than the intereſt of the Clergy then, which cauſed it to be prohibited for the future. And while it was uſed, it ſeems only to have been an enquiry after matter of fact; and he grants, *his Examples go no further, than where the Tithes increaſed out of the* (e) Ib. pag. 438. *Kings Demeſns, or immediate Tenancies* (*e*); and he brings an inſtance there, that this Writ was not granted out, if the Tithes belonged to any private Subject; ſo that this belonging purely to the Kings Prerogative, ought not to be urged either for any general Practice with reſpect to Subjects, or for ordinary Juriſdiction. That Fine, *An.* 1210, only records an acknowledgment of *Henry d'Albeny, That the Tithes of his Demeſns of great* Wicheford, *were appertaining to the Church of* Newton, *yet the Chaplain of* Wicheford (a Chappel of *Newton*) *ſhould receive them* (f) Ib. p. 440. *as he had anciently done* (*f*). Here is no Arbitrary diſpoſition, but an old Cuſtom ſecured by a Fine upon mutual agreement. And that Example of a Writ upon a Patent, *An.* 1343, was not obeyed by the Abbot of *Colcheſter*, who ſaith expreſly, *He doth not think this Court ought to have cognizance of this matter*; and the Caſe was ſo generally thought unjuſt, that this gave occaſion to the Statute made (g) Ib. p. 443. the year after, to prohibit theſe Writs for ever after (*g*). Finally, the Kings iſſuing out his Royal Command for paying Tithes, either where the right was plain (without any Suit) or where the Tithes aroſe out of his own Forreſts, ſeems to be no proof of the uſual or ordinary Juriſdiction of the Common Law over Tithes; but I am ſenſible of my own inability to determine things of this nature, wherefore I ſhall leave them to the more able

Judg-

Judgment of ſuch whoſe Poſſeſſion fits them for theſe Enquiries: It being ſufficient for me, that I have Now proved Tithes were inſtituted by God, and revealed to, as well as practiced by the Patriarchs before the Law, commanded expreſly under the Law, and not at all revoked, but eſtabliſhed in the Goſpel. That they were believed to be due by Gods Law among the Primitive Fathers, and moſt eminent Authors of all Ages, and paid freely in obedience thereunto by the firſt Chriſtians; That afterward they were ſetled by Laws Civil and Eccleſiaſtical, and Penalties inflicted on thoſe that detained them: and here in *England*, Tithes which were originally due to God, were freely ſetled on the Church by general Conſent, and that ſettlement confirmed by innumerable Councils and Parliaments, and Tithes by virtue thereof enjoyed or diſpoſed of by the Clergy for above 800 years together. All which duly conſidered, do prove Tithes are due both by the Law of God and Man, and may convince all that have the Juriſdiction over them, that they ought *To give unto God the things that are Gods.*

FINIS.